

1 BEFORE THE POLICE BOARD  
OF THE CITY OF CHICAGO

IN THE MATTER OF CHARGES ) Case No:  
3 FILED AGAINST ) 17PB2940  
POLICE OFFICER BRANDON TERNAND. )

5 - SESSION II -

6 CONTINUED REPORT OF THE VIDEOTAPED

7 PROCEEDINGS had at the hearing in the  
8 above-entitled matter before Ms. Allison Wood,  
9 Hearing Officer, at 30 North LaSalle Street,  
10 Suite 1240, Chicago, Illinois, on May 17th,  
11 2018, at the hour of 10:00 a.m.

## 13 APPEARANCES:

**CERTIFIED  
TRANSCRIPT**

14 CITY OF CHICAGO  
15 DEPARTMENT OF LAW  
16 BY: MR. JAMES FIEWEGER and  
17 MS. SARA WHALEY  
18 Special Assistant Corporation Counsel  
19 30 North LaSalle Street  
20 Suite 1020  
21 Chicago, Illinois 60602,

on behalf of the Superintendent;

20 MR. JAMES THOMPSON and  
MR. TIMOTHY GRACE -

21 on behalf of Respondent.

22 POLICE BOARD OF THE CITY OF CHICAGO  
MR. MAX CAPRONTI

23

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1           HEARING OFFICER WOOD: Good morning. We're  
2 here for the matter of charges filed against  
3 Officer Brandon Ternand. The case number is 17  
4 BP 2940. My name is Allison Wood. I am the  
5 hearing officer.

6                   I'm going to ask everyone to  
7 identify themselves for the record, beginning  
8 with the Superintendent.

9           MR. FIEWEGER: Jim Fieweger,  
10 F-I-E-W-E-G-E-R, for the Superintendent.

11           MS. WHALEY: Sara Whaley, W-H-A-L-E-Y, for  
12 the Superintendent.

13           MR. THOMPSON: James Thompson on behalf of  
14 Officer Brandon Ternand who is present.

15           MR. GRACE: Good morning, your Honor. My  
16 name is Tim Grace, G-R-A-C-E, on behalf of  
17 Mr. Ternand.

18           HEARING OFFICER WOOD: Thank you. We have  
19 a preliminary matter. A copy of the  
20 Respondent's motion to extend the hearing and  
21 for leave to disclose a new use-of-force  
22 expert. Would you like to speak about that on  
23 the record?

24           MR. THOMPSON: I just rest on the motion,

1    Madam Hearing Officer.

2            HEARING OFFICER WOOD: Can you give a  
3    summary so the record knows what it's about?

4            MR. THOMPSON: Well, in essence, subsequent  
5    to the -- subsequent to our prehearing  
6    conference, the -- our expert believes that  
7    based upon his current employment status with  
8    the Chicago Police Department, that based upon  
9    the nature of his opinions, that could result  
10   in some subsequent disciplinary action by the  
11   City of Chicago or the Chicago Police  
12   Department. And these events were unforeseen  
13   both by myself and by our expert until  
14   subsequent to the prehearing conference.

15           I would put on the record that we  
16   did have conversations with the City of Chicago  
17   relative to this issue, and we were most  
18   appreciative of their assistance and  
19   cooperation in an effort to try to resolve this  
20   issue, but, unfortunately, we were not able to  
21   satisfactorily resolve it, Madam Hearing  
22   Officer.

23           HEARING OFFICER WOOD: So you're asking for  
24   a 30-day continuance?

1           MR. THOMPSON:  Certainly long enough for us  
2  to present new -- present opinions to the City  
3  of Chicago and proceed with testimony from that  
4  expert who we anticipate will be the last  
5  witness in this case.

6           HEARING OFFICER WOOD:  So it's your  
7  intention to go forward today?

8           MR. THOMPSON:  As planned.

9           HEARING OFFICER WOOD:  And tomorrow as  
10  planned?

11          MR. THOMPSON:  As planned.

12          HEARING OFFICER WOOD:  And then looking for  
13  an additional date?

14          MR. THOMPSON:  Correct.

15          HEARING OFFICER WOOD:  Did you want to say  
16  anything in response?

17          MR. FIEWEGER:  We have no objection.  Now  
18  that we started the hearing, it is obviously in  
19  everybody's interest to complete it as  
20  expeditiously as possible.

21           We talked with counsel prior to  
22  this morning's hearing.  Perhaps we make a  
23  suggestion of setting a status like next week  
24  so Jim will have some a time to figure out who

1 he's got lined up and maybe give us a better  
2 idea when we can resume the hearing.

3 HEARING OFFICER WOOD: Are you agreeable to  
4 setting a status?

5 MR. THOMPSON: Yes, ma'am.

6 HEARING OFFICER WOOD: We can do that at  
7 the break or before we leave today. But I  
8 guess, for the record, we'll let it reflect  
9 that this motion has been granted, and we will  
10 set a status date to determine next steps after  
11 that. Is that agreeable to the parties?

12 MR. THOMPSON: Yes.

13 MR. FIEWEGER: Yes.

14 HEARING OFFICER WOOD: Are you ready to  
15 proceed?

16 MR. THOMPSON: Yes, ma'am. I think we are  
17 in the City's case at this point.

18 MR. FIEWEGER: We are going to call ou  
19 expert.

20 HEARING OFFICER WOOD: Because we went out  
21 of order.

22 MR. FIEWEGER: Yes.

23 (Witness was duly  
24 sworn.)

1                           MICHAEL GENNACO,  
2    called as a witness herein, after having been  
3    first duly sworn, was examined and testified as  
4    follows:

5                           DIRECT EXAMINATION

6    BY MR. FIEWEGER:

7    Q.    Sir, state your name and spell your  
8    last name for the court reporter.

9    A.    Yes. My name is Michael Gennaco.  
10   Last name is spelled G-E-N-N-A-C-O.

11   Q.    Mr. Gennaco, what do you do for a  
12   living?

13   A.    I'm an expert in police practices.

14   Q.    Whom are you employed by?

15   A.    I'm self-employed.

16   Q.    Do you operate a company?

17   A.    I'm a sole proprietor, and I also  
18   bring in subcontractors, depending on the  
19   project.

20   Q.    How long have you been in this line of  
21   work?

22   A.    I've been a police practices expert  
23   for approximately 14 years.

24   Q.    And in that line of work, have you

1 previously been qualified to testify as an  
2 expert regarding use of force?

3 A. Yes, I have.

4 Q. About how many occasions?

5 A. Probably half a dozen times in court.

6 Q. You're here today because we asked you  
7 to review the case involving the shooting of  
8 Dakota Bright from November of 2012, correct?

9 A. That's correct.

10 Q. Based on your review, did you form any  
11 opinions as to whether or not that shooting was  
12 in compliance with the use-of-force policies  
13 for the police department of the City of  
14 Chicago?

15 MR. THOMPSON: I just object. I think that  
16 calls for the ultimate conclusion that rests  
17 with the trier of fact, the way that question  
18 was worded.

19 HEARING OFFICER WOOD: Can you read that  
20 for me?

21 (Said question was read  
22 back.)

23 HEARING OFFICER WOOD: It sounded like he  
24 is asking him for his opinions.

1           MR. THOMPSON: I don't think he can give  
2 the ultimate -- that sounds like the ultimate  
3 opinion in this case.

4                   I believe that rests solely in  
5 the province of the trier of fact or the Police  
6 Board.

7           MR. FIEWEGER: There is no prohibition on  
8 an expert witness expressing an opinion on the  
9 ultimate issue.

10          HEARING OFFICER WOOD: I think that's why  
11 he's here.

12          MR. THOMPSON: Form of the question. By  
13 introducing the Chicago Police Department's  
14 general order and stating it that way is the  
15 only rule violation that Officer Ternand is  
16 subject to, and that's the ultimate issue.

17          HEARING OFFICER WOOD: Perhaps you can  
18 break it down into smaller pieces.

19          MR. FIEWEGER: There is no prohibition on  
20 an expert witness expressing an opinion on the  
21 ultimate issue of fact for the trier. I'll ask  
22 it again.

23          HEARING OFFICER WOOD: Just ask it again.

24 BY MR. FIEWEGER:

1 Q. Did you ultimately form opinions  
2 regarding the shooting on November 2012?

3                   A.     Yes, I did.

4 Q. And overall, what was your conclusion?

5           A.     My conclusion it was based on the  
6     policy of the Chicago Police Department in  
7     existence at the time of the incident; that the  
8     use of deadly force was contrary to that  
9     policy.

10 Q. Before we get into your work on this  
11 case, I'd like to cover a little bit about your  
12 background.

13 What's the highest level of  
14 education you've completed?

15           A.     I received A JD, doctor of juris, in  
16     1983.

17 Q. Where did you receive that from?

18 A. Stanford Law School.

19 Q. After you graduated from Stanford,  
20 what did you do?

21           A.    I clerked for a judge on the 9th  
22 Circuit for a year and went to work for the  
23 Civil Rights Division, U.S. Department of  
24 Justice.

1           Q.    Was that in Washington, DC?

2           A.    It was in Washington, although cases  
3    were all over the country.

4           Q.    What work did you do for the  
5    Department of Justice?

6           A.    For two years I was in the voting  
7    section, and then in 1986 I started as a  
8    federal prosecutor in the criminal section of  
9    the Civil Rights Division.

10          Q.    Within the criminal section of the  
11    Civil Rights Division, were there any  
12    particular types of cases you worked on?

13          A.    Yes.  Yes.  Three groups of cases,  
14    human trafficking, hate crimes.  For purposes  
15    of this hearing, I was -- focused a lot of our  
16    work -- my work was focused on allegations of  
17    police misconduct, excessive force, violation  
18    of the Fourth Amendment from a criminal  
19    perspective.

20          Q.    With respect to allegations of  
21    excessive force, what did your work for the  
22    Department of Justice involve?

23          A.    We would work with the FBI to conduct  
24    an initial investigation.  And then under the

1 appropriate circumstances, present the facts to  
2 a federal Grand Jury. And under the  
3 appropriate circumstances request indictment,  
4 and I was responsible for prosecuting any cases  
5 coming out of those indictments.

6 Q. And how long did you remain in that  
7 position with the Department of Justice?

8 A. I was with the Department of Justice  
9 first in Washington and then in Los Angeles  
10 from 1986 to 2001.

11 Q. While in Los Angeles, did you work for  
12 the United States Attorney's Office in the  
13 Southern District of California?

14 A. The Central District of California.  
15 And, yes, I did, and was doing the same work.

16 Q. And, again, was your work with the  
17 U.S. Attorney's Office focused on any  
18 particular types of cases?

19 A. The same, I actually created a civil  
20 rights section within the -- within the office.

21 Q. And during your time at the U.S.  
22 Attorney's Office in Los Angeles, did you  
23 continue to work on cases involving allegations  
24 of excessive force by police officers?

1           A.    Yes.

2           Q.    About how many such cases did you  
3 handle?

4           A.    In Los Angeles or in Washington?

5           Q.    All total.

6           A.    Probably reviewed in the 15-year  
7 period a thousand cases. Had Grand Juries in  
8 over 20 states in the country.

9           Q.    After you left -- when did you leave  
10 the U.S. Attorney's Office?

11          A.    I left in 2001.

12          Q.    After you left the U.S. Attorney's  
13 Office, what did you do?

14          A.    I continued in police review, police  
15 practices review. My focus in 2001 was the Los  
16 Angeles County Sheriff's Department. Largest  
17 sheriff's department in the country.

18          Q.    What did you do for the Los Angeles  
19 County Sheriff's Department?

20          A.    A number of things, but one of them  
21 was to review force incidents and make  
22 independent opinions and decisions about  
23 whether or not those force incidents were  
24 consistent with departmental policy.

1           Q.    Did you provide any sort of training  
2   or create any sort of training courses for the  
3   Sheriff's Department?

4           A.    Not only the Sheriff's Department,  
5   but, yes, the Sheriff's Department, correct.

6           Q.    What other -- what other organizations  
7   besides the Sheriff's Department have you  
8   worked for or with since leaving the U.S.  
9   Attorney's Office?

10          A.    I haven't worked for departments, but  
11   I've worked for jurisdictions as independent  
12   reviewers of departments. So by that I mean I  
13   don't get employed by the agency itself for  
14   purpose of independence, so I will often be  
15   asked by the board of supervisors, the mayor,  
16   other entities, city's attorney's office to  
17   provide independent review process.

18          Q.    And what sort of cases do you review  
19   for these municipalities?

20          A.    They vary, but it's primarily use of  
21   deadly force.

22          Q.    And what does your work involve? I  
23   mean ultimately what do they retain you to do?

24          A.    I no longer am involved in the

1 investigation, although I can be a resource as  
2 the investigation moves forward to ensure that  
3 it's accurate and fair and objective.

10 Q. Can you make an estimate about how  
11 many such cases you provided opinions for  
12 municipalities on?

13           A.    Yes.  I would say individually over  
14 200.  As a group, there were six of us, and I  
15 oversaw the independent review process.  Closer  
16 to a thousand.

17 Q. And could you give us an estimate  
18 about roughly what percentage of those cases  
19 did you determine the use of force was not  
20 justified?

21           A.    Very small percentage. I would say  
22   about one and a half percent I would say.

23 Q. Have you ever served as a  
24 court-appointed expert regarding reform of

1 use-of-force policies?

2 A. I have.

3 Q. Can you describe that work?

4 A. Yes. I was appointed by Judge Thelton  
5 Henderson after there was a settlement in a  
6 case involving the California Department of  
7 Corrections and Rehabilitation, and we were  
8 asked to totally reform their use-of-force  
9 policy, as well as their review of force  
10 process.

11 Q. And did you create any sort of  
12 training in connection with that?

13 A. Yeah, I was involved in the training  
14 following the revamping of the policy, and I've  
15 been involved in training in many other  
16 agencies as well.

17 Q. What sort of training have you  
18 provided to other agencies?

19 A. Everything from how to review  
20 use-of-force incident to best practices on  
21 training use of force, helping to develop  
22 scenarios on scenario-driven training, as well  
23 as -- as well as providing over-arching  
24 training to officers.

1                   So I've trained officers as well  
2 as supervisors who are responsible for the  
3 initial review of those practices.

4           Q.    Is that using training courses that  
5 you helped develop?

6           A.    I've been involved in the  
7 developmental process, yes.

8           Q.    Have you had the experience of  
9 testifying in connection with use-of-force  
10 cases?

11          A.    Yes.

12          Q.    About how many occasions?

13          A.    I would say, as I said earlier, about  
14 half a dozen times in formal jurisdictions.

15          Q.    About how many officer-involved  
16 shootings have you reviewed throughout your  
17 career?

18          A.    As an individual, I would say over  
19 200.

20          Q.    Can you tell us -- can you describe  
21 briefly what process you go through in order to  
22 assess and determine whether or not there was  
23 appropriate use of deadly force in the case?

24          A.    If my responsibility is just to review

1 the evidence that has been collected pursuant  
2 to the investigation, I, as a first step,  
3 collect that information.

4 So all information related to the  
5 investigation as part of the investigative file  
6 would be something that I would look at.

7 I go beyond the actual written  
8 documents and access and listen to  
9 tape-recorded interviews, if they are  
10 available, forensic evidence, and physical  
11 evidence, photographs. Obviously anything  
12 that's part of the investigative file would be  
13 something I would want to look at.

14 Q. Once you've collected and reviewed the  
15 material, what do you do?

16 A. I take that information and process  
17 it, analyze it and stack it up against the  
18 expectations of the police agency that I am  
19 looking at, to see whether or not the actions  
20 of the officer comport with the expectations of  
21 the department as expressed by the written  
22 policy.

23 Q. And is that the process that you  
24 followed in this case?

1           A.    That is correct.

2           Q.    So you said you would typically start  
3 by collecting information about the case.

4                            What information have you  
5 collected and reviewed in connection with this  
6 case?

7           A.    I started with the investigative file.  
8 Looked at, as well, the analysis that was  
9 conducted by the investigative agency. Looked  
10 at the analysis and response that was  
11 collected -- prepared by the Chicago Police  
12 Department. And sort of the rebuttal response  
13 that was also prepared.

14                            And as I indicated earlier in  
15 this case, I also listened to a number of the  
16 tape-recorded interviews that were part of the  
17 investigative package.

18                            I looked at photographs. I  
19 looked at autopsy report. And any other aspect  
20 that I -- that was in the four corners of the  
21 report.

22           Q.    And you prepared a report describing  
23 your opinions in this case, correct?

24           A.    That's correct.

1           Q.    And was the information that you  
2 reviewed in preparing that -- preparing those  
3 opinions listed in that report?

4           A.    It was.

5           Q.    In addition to the material that's  
6 listed in the report, are there any other  
7 materials that you have reviewed?

8           A.    There are. I asked and received the  
9 training records of the officer involved. I  
10 also had an opportunity to visit the scene of  
11 the incident.

12          Q.    When did you make that visit?

13          A.    I visited the scene yesterday.

14          Q.    And does the information that you  
15 obtained during that visit help in forming your  
16 opinions?

17          A.    It does.

18          Q.    Did you speak to anybody at the  
19 Chicago Police Department in connection with  
20 forming your opinions?

21          A.    I did.

22          Q.    Who was that?

23          A.    I'm going to refer to my notes. I  
24 spoke to an Officer Trak, and for the court

1 reporter, I will spell it, but I would  
2 pronounce it Silapaduriyang. And that is  
3 spelled S-I-L-A-P-A-D-U-R-I-Y-A-N-G

4 Q. And what was that officer's position?

5 A. He was working -- he is working at the  
6 training academy.

7 Q. Why did you speak to him?

8 A. I wanted to know -- I wanted to have a  
9 better understanding of what training was  
10 provided to officers during the relevant period  
11 of time.

12 Q. And was that officer able to provide  
13 you with that information?

14 A. He was able to provide me some  
15 information, yes.

16 Q. Can you generally describe what  
17 information you received from this officer?

18 A. I got an understanding of what kind of  
19 training was being provided in the period that  
20 was relevant. And I focused almost exclusively  
21 in my conversation with him to any training  
22 provided prior to November of 2012.

23 Q. Mr. Gennaco, did you review the  
24 general order establishing the bases for using

1 deadly force for the Chicago Police Department  
2 that was in effect in November of 2012?

3 A. Yes.

4 MR. FIEWEGER: Can I approach, your Honor?

5 HEARING OFFICER WOOD: Yes.

6 BY MR. FIEWEGER:

7 Q. Sir, I'm going to hand you a document  
8 that we marked as Exhibit No. 4, which is a  
9 copy of general order GO3-02-03 dated October  
10 1st, 2012. Is that the general order that you  
11 reviewed?

12 A. Yes, it is.

13 Q. What is your understanding of how this  
14 general order should be assessed and applied to  
15 any particular case?

16 A. Well, you start with the plain  
17 language of the general order. It is helpful  
18 in that -- it is helpful to best understand the  
19 plain language by the fact that this policy is  
20 the policy in existence at the time of the  
21 incident. Actually defines some of the terms  
22 on the second page. So you look at the  
23 definitions, and then you essentially apply the  
24 language of this policy to the facts that have

1 been obtained through the investigation.

2 Q. Is it fair to say this policy sets out  
3 certain circumstances that must exist before  
4 deadly force can be used by Chicago police  
5 officers?

6 A. Correct.

7 Q. What are those circumstances?

8 A. There are requirements before an  
9 officer is entitled to or justified in using  
10 deadly force. So it's the  
11 responsibility -- the way this policy reads,  
12 it's the responsibility of the officer to  
13 establish one of those elements in order to  
14 justify the application of deadly force.

15 Q. Based on your work as an attorney in  
16 the field of use of force, are you familiar  
17 with the case law and standards regarding the  
18 assessment of the use of force?

19 A. I am. And the key phrase in this  
20 policy that incorporates those standards is the  
21 phrase reasonably believes.

22 Q. What does the -- to you what does that  
23 term mean?

24 A. Reasonably believes is a reference to

1 a Supreme Court opinion, *Graham versus Connor*,  
2 that was issued in 1989 and has become the  
3 essential standard that virtually every police  
4 department in this country uses in assessing  
5 the actions of an officer's use of force in a  
6 Fourth Amendment context.

7 Q. What does that standard provide?

8 A. The standard speaks to the dictates of  
9 *Graham versus Connor* and indicates in order to  
10 evaluate an officer's reasonableness, you  
11 take -- it's an objective reasonable standard,  
12 and you evaluate the decision of the officer,  
13 compared to a reasonable officer, how a  
14 reasonable officer would perform in the field  
15 under the same circumstances.

16 It's also important to evaluate  
17 the totality of the circumstances in making  
18 that evaluation.

19 Q. Why is it important to evaluate the  
20 totality of the circumstances?

21 A. Mostly because the Supreme Court says  
22 it was. But -- says it is. But essentially  
23 the rationale is that you have to consider what  
24 the officer was facing, what the officer's

1 challenges were at the time he made the  
2 decision to use deadly force.

3 The other thing that I don't want  
4 to omit is that the Supreme Court also teaches  
5 that the evaluation should be considering what  
6 the officer's state of mind was at the time of  
7 the incident and not with 20/20 hindsight.

8 Q. In reaching your opinions in this  
9 case, did you consider the events immediately  
10 leading up to firing the shot in November of  
11 2012?

12 A. Consistent with the Graham versus  
13 Connor analysis, I had to, yes.

14 Q. So when you say the totality of the  
15 circumstances in this case, does that include  
16 the events involving the chase of Dakota Bright  
17 through the neighborhood?

18 A. The events that lead up to the  
19 decision to use deadly force are highly  
20 relevant in the analysis.

21 Q. So you did consider the events  
22 involved in the chase?

23 MR. GRACE: Judge, I object at this point.  
24 The expert has notes in front of him, and I

1 don't know if the expert can look at notes to  
2 assist him in testifying.

3 Now, I know the City could ask  
4 the expert if anything could assist him in his  
5 testimony, but that hasn't been decided yet.  
6 He's reading off of a yellow pad.

7 I mean a witness can't testify  
8 off of notes. That's not proper.

9 MR. FIEWEGER: He has not -- I've been  
10 watching him. He hasn't been reading off the  
11 pad. He referred to it one time for a name,  
12 and he stated on the record that he was  
13 referring to it.

14 MR. GRACE: I just saw him turn his page.  
15 I'm not trying to be difficult. You can't  
16 testify off of notes.

17 If you want to lay the foundation  
18 and say would it assist you to look at your  
19 report or to provide notes, but he's got pages  
20 and pages of notes in front of him. It's basic  
21 evidence. You don't allow a witness to do  
22 that.

23 MR. FIEWEGER: He'll put his notes aside.

24 THE WITNESS: Thank you. I will use a

1 blank page. If there's a question that I need  
2 to remind myself, I hope it's okay to jot down  
3 a word or two.

4 HEARING OFFICER WOOD: Right. I would say  
5 if there's anything that you are being asked  
6 that you don't remember, and you need something  
7 to help you remember, then you should say that.

8 THE WITNESS: Of course.

9 MR. GRACE: Right. Thanks.

10 HEARING OFFICER WOOD: Okay.

11 BY MR. FIEWEGER:

12 Q. So you did consider the events  
13 involving the chase through the neighborhood in  
14 forming your opinions?

15 A. Yes, I did.

16 Q. Are you critical of any of the actions  
17 that Officer Ternand and his partners took  
18 during that chase?

19 A. Yes.

20 Q. In particular, which actions are you  
21 critical of?

22 A. There are a number of actions that are  
23 concerning, but I think if I were to sum up my  
24 concerns, it had to do with the way in which

1 the officers -- once they observed Mr. Bright,  
2 the way in which they responded to that  
3 observation and the way in which they  
4 endeavored to apprehend him.

5 Q. Based on your experiences, is it  
6 important for officers involved in a chase to  
7 maintain communication during the chase?

8 A. Absolutely.

9 Q. Are you critical of any of the  
10 communication efforts that were undertaken in  
11 connection with this chase?

12 A. I think that after Officer Ternand got  
13 out of his car, I am critical of the lack of  
14 communication at that point.

15 Q. What is your understanding of what  
16 communication took place after he got out of  
17 the car?

18 A. None.

19 Q. It's your understanding at one point  
20 he encountered Officer Bruno in the alley,  
21 correct?

22 A. That's correct.

23 Q. Are you aware of any communication at  
24 that point?

1           A.    Yes. Officer Ternand indicated that  
2 Mr. Bright was carrying a weapon. That's based  
3 on the testimony of Officer Ternand and Officer  
4 Bruno.

5           Q.    Are you aware of any other  
6 communication after he got out of the car?

7           A.    No. And my earlier answer was  
8 regarding radio communications.

9           Q.    Why are you critical of that lack of  
10 communication?

11          A.    It's universally taught that  
12 communication is key, particularly during the  
13 tactical incident, such as a foot pursuit,  
14 which is essentially what was going on after  
15 Officer Ternand got out of his car.

16          Q.    Why is that communication key?

17          A.    It's key so that each officer who is  
18 responding to the incident knows, one, what the  
19 individual who is pursued is doing; and two,  
20 where that is happening; three, what the  
21 officer is doing and observing, so that they  
22 have the ability to coordinate their response.

23          Q.    When Officer Ternand exited the car on  
24 Marquette, he separated from his partner,

1      Officer Razo, correct?

2            A.    That's correct.

3            Q.    Are you critical of that?

4            A.    Yes.

5            Q.    Why?

6            A.    Because, again, it's taught

7      universally that it's better preferable and

8      sometimes requisite for all officers to stay

9      together in a foot pursuit.

10                A foot pursuit is probably one of  
11      the most dangerous tactics that an officer can  
12      engage in in an officer's career.

13                Q.    Why is that?

14                A.    Number of reasons. Primarily because  
15      when you are involved in a foot pursuit, the  
16      direction of travel is entirely dependent on  
17      what the individual being pursued decides to  
18      do; therefore, that individual who's being  
19      chased gets to decide where the officer's going  
20      to go. That's highly dangerous and the  
21      suspect, the individual being pursued, has a  
22      tactical advantage at that point.

23                Q.    Are there other steps that Officer  
24      Ternand took during this chase that you are

1 critical of?

2 A. Yes.

3 Q. What?

4 A. One of the things that happened based  
5 on, again, his accounts, is that when he got  
6 into the backyard, he scaled a three or  
7 four-foot fence. The measurements  
8 depends -- are different, depending on the  
9 version that you read. But it was a  
10 significantly substantial barrier that he  
11 climbed over in order to continue his chase of  
12 Mr. Bright.

13 Q. And why are you critical of that, sir?

14 A. Because as the officer himself admits,  
15 in order to scale that fence, he had to put  
16 away his weapon. He had to holster it. He had  
17 to scale the fence. It put him at a higher  
18 elevation making him significantly vulnerable  
19 to any kind of attack that the believed-to-be  
20 armed individual may have decided to do at that  
21 point.

22 And it left him entirely  
23 vulnerable and unarmed essentially.

24 Q. Are you familiar with what are the

1 principles of cover?

2 A. I am.

3 Q. What are principles of cover?

4 A. Principles of cover or principles of  
5 concealment are essentially, again, universally  
6 taught in police agencies and academies, which  
7 is essentially that when you are involved in a  
8 tactical situation, particularly if you're  
9 involved with a person who is believed to be  
10 armed, it's really critical to not put yourself  
11 out in the open, to not make yourself  
12 vulnerable to a draw and then a shoot and  
13 aggression against you; and therefore, you  
14 should always be assessing the potential cover  
15 that is available to you when you are engaging  
16 or attempting to arrest or apprehend the  
17 individual.

18 MR. FIEWEGER: May I approach the witness?

19 HEARING OFFICER WOOD: Yes.

20 BY MR. FIEWEGER:

21 Q. Sir, I'm going to hand you what's  
22 previously been marked as Exhibit No. 6. And  
23 I'm referring you to page SUP 000283. Have you  
24 seen that picture before, sir?

1           A.    I have.

2           Q.    What is that?

3           A.    This appears to be a photograph of the  
4    backyard, and I think it's looking opposite  
5    from where Officer Ternand says he was at the  
6    time that he decided to use deadly force.

7           Q.    So that's a photograph of the location  
8    where Officer Ternand was when he fired his  
9    weapon looking from the south to the north?

10          A.    Correct. And if I am correct, I  
11   believe this was taken after nightfall had  
12   occurred, so it doesn't really duplicate the  
13   daytime conditions of the incident.

14                  But other than that, my  
15   understanding is a fair approximation of the  
16   area in question.

17          Q.    There's a tree in that photograph,  
18   correct?

19          A.    In the right-hand side, yes.

20          Q.    What's your understanding of where  
21   Officer Ternand was in relation to that tree  
22   when he fired his weapon?

23          A.    Based on my review of Officer  
24   Ternand's several accounts, my understanding is

1 he was within arm's reach of the tree.

2 Q. Okay. Could that tree have possibly  
3 provided cover?

4 A. Absolutely.

5 Q. Are you critical of Officer Ternand  
6 for not using the tree as cover?

7 A. I'm critical of Officer Ternand for  
8 not thinking about using the tree as cover.

9 Q. Is there anything else in particular  
10 about the foot pursuit itself that you are  
11 critical of?

12 A. The splitting of the partners happened  
13 twice, not just once.

14 Q. What's the second issue?

15 A. Coincidentally, just as a result of  
16 where Mr. Bright ended up running -- well, it  
17 happened first when Officer Ternand left his  
18 squad car and left his partner behind.

19 It happened a second time when he  
20 ran up and encountered Officer Bruno, and then  
21 the two without speaking to each other decided  
22 to go in different -- opposite direct -- or  
23 different directions and then ended up  
24 splitting and leaving Officer Ternand in the

1      backyards of Indiana Avenue by himself.

2            Q.    Again, why are you critical of that?

3            A.    Because there's safety in numbers when  
4      you are involved in a tactical operation like a  
5      foot pursuit, it's extremely preferable, and  
6      some agencies dictate it, that officers stay  
7      together.

8                    And I can give you an example.

9      So if the decision had been made to scale the  
10     fence, and you had two officers involved in  
11     that pursuit, one of them could have kept cover  
12     on the other officer as they negotiated the  
13     fence. That wasn't possible when Ternand was  
14     by himself.

15            MR. FIEWEGER: Your Honor, may I approach  
16     the witness, please?

17            HEARING OFFICER WOOD: Yes.

18    BY MR. FIEWEGER:

19            Q.    Sir, I'm handing you two photographs  
20     that have been marked as Exhibit No. 5 and No.  
21     6. Sir, you said that you made a visit to the  
22     scene of the shooting?

23            A.    That is correct.

24            Q.    And you did that yesterday?

1           A.    Yes, sir.

2           Q.    Do you recognize what's depicted in  
3   photographs 5 and 6?

4           A.    I do. These are photographs that  
5   depict sort of the path that Mr. Bright took or  
6   would have taken, perhaps, had the deadly force  
7   incident not occurred.

8           Q.    So is it your understanding that  
9   Mr. Bright was in the backyard of the lot at  
10  6727 South Indiana when he was shot?

11          A.    Yes, sir.

12          Q.    If you take a look at the fence that's  
13  depicted in Exhibit No. 5, is that the fence on  
14  the south side of the lot at 6727 South  
15  Indiana?

16          A.    It is.

17          Q.    And if you take a look at the fence  
18  and the hedgerow that's depicted in Exhibit No.  
19  6, is that the fence and hedgerow that is on  
20  the south side of the lot in the next lot south  
21  of 6727 South Indiana?

22          A.    Yes, sir.

23          Q.    Now, Mr. Gennaco, is it your  
24  understanding that Officer Ternand fired his

1      weapon as Dakota Bright turned back toward him  
2      and was reaching toward his waistband where he  
3      believed that Mr. Bright was carrying a gun?

4            A.    It is my understanding that that is  
5      how Officer Ternand reported the incident.

6            Q.    Do you consider that account of the  
7      event to justify the use of deadly force in  
8      this instance?

9            A.    No.

10          Q.    Why not?

11          A.    There were other options. One, I have  
12      questions about the account itself. But  
13      assuming that even that is accurate, there were  
14      other options that presented themselves to  
15      Officer Ternand that he chose not to take.

16          Q.    You said that you have questions about  
17      the account itself?

18          A.    Correct.

19          Q.    Do you consider the account credible?

20          A.    Based on the physical and forensic  
21      evidence, I do not.

22          Q.    Why not?

23          A.    Because it doesn't match up with the  
24      physical, forensic and circumstantial evidence.

1           Q.    In particular, what forensics and  
2 physical evidence does it not match up with?

3           A.    The first, in some ways most important  
4 piece of forensic evidence, is the path and  
5 trajectory of the bullet that was fired by  
6 Officer Ternand.

7           Q.    And what is it about that path?

8           A.    As the autopsy indicates demonstrably,  
9 the bullet struck Mr. Bright almost center head  
10 area in a back-to-front trajectory.

11          Q.    So based on the autopsy report's  
12 conclusion that the bullet entered the mid-line  
13 of the back of his head, can you conclude that,  
14 in fact, Mr. Bright was looking away from  
15 Officer Ternand at the time he fired the shot?

16          MR. THOMPSON: Objection. Leading.

17          HEARING OFFICER WOOD: It's a little  
18 leading.

19 BY MR. FIEWEGER:

20          Q.    Can you conclude which direction  
21 Mr. Bright was facing at the time Officer  
22 Ternand fired the shot?

23          A.    I cannot conclude demonstrably, but if  
24 you are looking at probabilities, which I

1 believe you were here, it's more probable based  
2 on mere evidence that at least -- certainly at  
3 the time the bullet struck him, he was facing  
4 away from Ternand. And more likely at the time  
5 that Ternand shot him, he was facing away from  
6 Officer Ternand.

7 Q. Did you try to assess the likelihood  
8 of the movements attributed to Mr. Bright from  
9 Mr. Bright's perspective?

10 A. Yes.

11 Q. And why did you do that?

12 A. Because Mr. Bright isn't available to  
13 testify, but I think it's important to  
14 circumstantially evaluate the actions of the  
15 individual being pursued.

16 Q. And did you reach any conclusions  
17 about the likelihood of Mr. Bright having taken  
18 actions that are attributed to him?

19 A. Yes.

20 Q. And what was that?

21 A. I concluded that based on the  
22 information available -- on the information  
23 that is reviewable and included in the  
24 investigative report, that it would have been

1 highly unlikely for Mr. Bright to have taken  
2 the actions that were described by Officer  
3 Ternand.

4 Q. Why is that?

5 A. Several reasons. One, Mr. Bright had  
6 no rational reason at that time to fully turn  
7 on Officer Ternand, because, in reality, he did  
8 not have a weapon.

9 MR. THOMPSON: Objection. Foundation, your  
10 Honor.

11 HEARING OFFICER WOOD: Is it disputed?

12 MR. THOMPSON: Is what disputed, ma'am?

13 HEARING OFFICER WOOD: That he didn't have  
14 a weapon at the time of the shooting. That  
15 testimony was given earlier.

16 MR. THOMPSON: Right, that's not disputed.

17 HEARING OFFICER WOOD: Wasn't that given  
18 earlier?

19 MR. THOMPSON: It was, but I believe he was  
20 referencing what he believed Dakota was doing.

21 HEARING OFFICER WOOD: And he is explaining  
22 it. I'm not sure I understand your objection.

23 MR. THOMPSON: I can't exactly say what  
24 that answer was. I'd have to have it read back

1 to me.

2 HEARING OFFICER WOOD: He is trying to  
3 explain it, and you are saying he didn't have  
4 foundation. What foundation are you saying he  
5 didn't have?

6 MR. THOMPSON: What the intention of  
7 Mr. Dakota was -- Mr. Bright was at the time.

8 HEARING OFFICER WOOD: He is -- I think  
9 he's laid a foundation of what his opinion is  
10 based on.

11 MR. THOMPSON: My point is, how would he  
12 know what the intention of Mr. Bright was at  
13 any particular moment in time?

14 HEARING OFFICER WOOD: He is giving his  
15 opinion, and you get to cross-examine. Do you  
16 remember where you were?

17 THE WITNESS: I think I do, your Honor.

18 There was no weapon. There was  
19 nothing in his pocket for him to reach toward.  
20 He was successfully scaling fences and either  
21 maintaining or increasing distance between  
22 himself and Officer Ternand. He was, I think,  
23 getting away.

24 There have been times in which I've

1 evaluated shooting incidents in which  
2 individuals being pursued make decisions that  
3 are not rational and do turns suggesting  
4 aggression. But in my experience, those happen  
5 when an individual has a history of mental  
6 illness, perhaps trying to create a suicide by  
7 cop situation, is under the influence of illicit  
8 drugs or alcohol, or is otherwise compromised by  
9 ingestion of illicit substances. And the  
10 forensic evidence from the autopsy in this case  
11 suggested none of this was going on with  
12 Mr. Bright; that there was no prior evidence of  
13 any kind of mental illness; and therefore,  
14 there's, in my view, no justification or reason  
15 that Bright would have turned at that time and  
16 drawn a -- for a weapon that wasn't there.

17 Q. Is there anything about the manner in  
18 which Officer Ternand fired his weapon that  
19 enforces your opinions in this case?

20 A. Absolutely.

21 Q. What is your understanding of the  
22 manner in which he fired his weapon?

23 A. My understanding, based on the  
24 evidence, is that Officer Ternand used sights

1 from over 50 feet away and fired one round at  
2 Mr. Bright.

3 Q. What is it about the fact he fired one  
4 round that is significant to you?

5 A. Officers are trained in Chicago, and  
6 elsewhere, to fire -- continue to use deadly  
7 force until the threat is no longer presented.

8 Q. Is there anything about the  
9 circumstances of the chase that makes it more  
10 or less likely that an officer would fire more  
11 than one time?

12 A. The circumstances of a chase, if an  
13 officer is involved in a tactical operation  
14 prior to the decision to use deadly force, it's  
15 obviously going to impact the officer's level  
16 of adrenalin. It's going to potentially impact  
17 the judgment of the officer based on that, and  
18 the fact that in order to scale a fence, in  
19 order to run full tilt in chasing an individual  
20 like Mr. Bright, would have been some level of  
21 exertion, which also can compromise the  
22 judgment of an officer.

23 Q. In your experience, is it typical for  
24 an officer when confronted with a deadly force

1 situation to fire one time?

2 A. Not consistent at all.

3 Q. Can you describe that, please?

4 A. One, because of the way in which  
5 officers are trained; and two, because of the  
6 simple inability of officers to react to a  
7 changed circumstance as quickly as one might  
8 think they would be able to.

9 When officers, themselves, are  
10 being aggressed by an individual, by a suspect  
11 who is believed to be armed, invariably the  
12 officers will fire between two to four or even  
13 more rounds. One round is an extremely  
14 unusual.

15 Q. Are you aware of any studies  
16 supporting that?

17 A. I am.

18 Q. Can you describe them briefly?

19 A. There are a number of studies that  
20 indicate, one, that is extremely rare for an  
21 officer-involved shooting to occur over a  
22 distance as in this case. But also that when  
23 officers themselves are in fear for their  
24 lives, the average number of shots range --

1 depending on the department, range from two and  
2 a half to five shots, depending on the  
3 information that I've reviewed.

4 Q. You indicated that the fact that  
5 Officer Ternand used his sights on his weapon  
6 was significant to you. Why is that?

7 A. Again, in my experience, when officers  
8 are being aggressed with a deadly threat and  
9 are experiencing a sudden movement causing them  
10 to have to react and use deadly force in a,  
11 quote, "split second decision," that generally  
12 officers do not feel they have the time to line  
13 up the target using sights the way they are  
14 trained on the range to do in a situation.  
15 Instead, what they're forced to do is  
16 essentially what we call point and shoot.

17 Q. Now, it's your understanding that  
18 Officer Ternand fired one shot and one shot hit  
19 the target, correct?

20 A. That's correct.

21 Q. Is that fact significant to you?

22 A. It's extremely unusual that that  
23 occurred.

24 Q. Why is that?

1           A.    Again, because generally, when  
2 officers fire, particularly at that distance  
3 and particularly under the stress of being  
4 aggressed with a deadly force situation they  
5 believe they need to eliminate, they miss. At  
6 least with some of the rounds.

7           Q.    So I take it you do not find credible  
8 of the account that Dakota Bright turned  
9 towards Officer Ternand and presented him with  
10 an aggressive manner?

11          MR. THOMPSON: Objection. Leading.

12          HEARING OFFICER WOOD: I'll allow it.

13          THE WITNESS: To me, it doesn't line up  
14 with the physical evidence and my experience  
15 reviewing hundreds of officer involved  
16 shootings.

17          BY MR. FIEWEGER:

18          Q.    I'd ask you for the following  
19 questions to assume, in fact, Dakota Bright did  
20 take the actions that are attributed to him.  
21 Under those circumstances, do you think the use  
22 of deadly force in this case was appropriate?

23          A.    I believe that even if everything that  
24 Officer Ternand said happened with regard to

1 the turning, the reaching happened, that it was  
2 also unreasonable under the totality of the  
3 circumstances for him to use deadly force under  
4 those -- under the situation presented, excuse  
5 me.

6 Q. And why is that?

7 A. Again, he made decisions that placed  
8 himself in a situation. He made the decision  
9 to jump the fence and end up in that backyard  
10 alone. And based on the fact that there was  
11 over 50 feet between them, and most primarily,  
12 most significantly there was a tree right next  
13 to him, there were other actions that could  
14 have been taken that would have kept him safe  
15 and kept the suspect alive.

16 Q. You mentioned there were 50 feet  
17 between them. Why is that significant?

18 A. Because distance is always critical  
19 and important and keeps officers safe.

20 It's, again, universally taught,  
21 that when you are involved with an armed  
22 suspect, it's important to keep distance and  
23 not close distance.

24 We would have a different

1 scenario if Officer Ternand was in that same  
2 backyard and four five feet from the suspect.  
3 That's not what we have here.

4 Q. In conclusion, Mr. Gennaco, what is  
5 your opinion in this matter?

6 A. As I earlier stated, my opinion is  
7 that it was under the Graham versus Connor  
8 standard and under the policy in existence at  
9 the time as set out by the general order, that  
10 the decision to use deadly force is not  
11 justified and is in violation of the general  
12 order.

13 MR. FIEWEGER: Thank you, sir.

14 HEARING OFFICER WOOD: Cross?

15 MR. THOMPSON: Your Honor, can we have a  
16 minute? If I can respectfully like to see  
17 Mr. Gennaco's notes.

18 HEARING OFFICER WOOD: Response to that?

19 MR. FIEWEGER: I would only caution don't  
20 show him the notes if there's anything  
21 reflecting our conversations.

22 THE WITNESS: There is not.

23 HEARING OFFICER WOOD: We'll take a  
24 five-minute break.

1 (Recess.)

2 HEARING OFFICER WOOD: And we are back on  
3 the record for the charges against Police  
4 Officer Brandon Ternand, case number 17 BP  
5 2940. And Respondent's counsel is going to  
6 proceed with cross-examination of the expert.

7 MR. THOMPSON: Thank you. May I proceed?

8 HEARING OFFICER WOOD: Yes.

9 CROSS-EXAMINATION

10 BY MR. THOMPSON:

11 Q. Good morning, Mr. Gennaco. Am I  
12 saying that correctly?

13 A. You are.

14 Q. My name is Jim Thompson, and I'd like  
15 to ask you some questions today. Okay?

16 A. Of course.

17 Q. Just like to get a feel for some  
18 general personal background here relative to  
19 you. Is that okay?

20 A. Yes.

21 Q. Just some simple questions,  
22 Mr. Gennaco. Where were you born?

23 A. Oak Harbor, Washington.

24 Q. And where do you live presently?

1           A.     Playa del Rey, California.

2           Q.     How long have you lived there,

3     Mr. Gennaco?

4           A.     20 years.

5           Q.     Do you have any military training?

6           A.     No.

7           Q.     Have you served as a law enforcement  
8     officer?

9           A.     No.

10          Q.     Have you ever been to any law  
11     enforcement academy?

12          A.     Yes.

13          Q.     Have you ever been a cadet in any law  
14     enforcement academy?

15          A.     No.

16          Q.     Do you own a firearm?

17          A.     No.

18          Q.     Have you been to Chicago before?

19          A.     Yes.

20          Q.     What's the longest continuous period  
21     of time that you've been in Chicago?

22          A.     Probably about two weeks.

23          Q.     Do you have any family that resides in  
24     Chicago?

1           A.     Yes.

2           Q.     Do you come out here to see them  
3     regularly?

4           A.     When I can.

5           Q.     Who is that? Is that a brother,  
6     sister?

7           A.     It's a niece.

8           Q.     A niece. Okay. When you come out to  
9     visit your niece, do you ever discuss current  
10   events in Chicago?

11          A.     Yes.

12          Q.     Does your niece discuss with you  
13   current problems in the City of Chicago?

14          A.     No.

15          Q.     Do you follow Chicago news at all?

16          A.     Not regularly.

17          Q.     As it relates to your expertise in the  
18   field of policing, do you follow the news out  
19   of Chicago at all relative to guns and gun  
20   violence?

21          A.     I see media reports, yes.

22          Q.     Would you agree that the largest, most  
23   serious problem facing citizens in the City of  
24   Chicago is gun and gun violence?

1 MR. FIEWEGER: Objection. Foundation.

2 MR. THOMPSON: I'm asking if he knows.

3 HEARING OFFICER WOOD: What's the  
4 foundation? What's the relevance?

5 MR. THOMPSON: Totality of the  
6 circumstances.

7 HEARING OFFICER WOOD: Read the question  
8 again.

9 (Said question was read  
10 back.)

11 HEARING OFFICER WOOD: What's the  
12 foundation for that?

13 MR. THOMPSON: News.

14 HEARING OFFICER WOOD: The largest gun  
15 problem? That's your characterization, isn't  
16 it? You are characterizing it that way.

17 MR. THOMPSON: Okay. I can -- I'll  
18 rephrase the question.

19 HEARING OFFICER WOOD: Thank you.

20 BY MR. THOMPSON:

21 Q. Is gun and gun violence the largest  
22 criminal problem in the City of Chicago?

23 MR. FIEWEGER: Objection. Foundation.

24 HEARING OFFICER WOOD: You still have -- I

1 don't know how he can answer that.

2 MR. THOMPSON: All right.

3 BY MR. THOMPSON:

4 Q. Let me try it this way, Mr. Gennaco.

5 Are you familiar with any of the major criminal  
6 problems in the City of Chicago?

7 A. Only from the reports.

8 Q. Okay. And from your media reports,  
9 what are the large criminal problems presented  
10 in the City of Chicago?

11 A. They're based on media reports, until  
12 recently, I think there's been a downturn, but  
13 homicides, concerns about the Chicago Police  
14 Department, concerns about crime in general.

15 Q. Well, let's be a little more specific.  
16 Does crime in general, is that really talking  
17 about guns and gun violence?

18 A. Not exclusively.

19 Q. Okay. Have you ever watched Chicago  
20 news when you haven't witnessed comments about  
21 murders, gun violence in Chicago?

22 MR. FIEWEGER: Objection. Relevance.

23 HEARING OFFICER WOOD: Sustained.

24 BY MR. THOMPSON:

1           Q.    What's the purpose of you watching  
2 news in the City of Chicago?

3           MR. FIEWEGER: Objection. Relevance.

4           HEARING OFFICER WOOD: Sustained.

5 BY MR. THOMPSON:

6           Q.    You were retained by the City of  
7 Chicago in this matter to provide opinions,  
8 correct?

9           A.    Yes.

10          Q.    When were you retained?

11          A.    I'm not sure of the exact date, but I  
12 would say two or three months ago.

13          Q.    And when you were retained by the City  
14 of Chicago, did you provide them with a  
15 customary retainer and customary fee rates?

16          A.    Within the range, yes.

17          Q.    And the retainer and the fee rates  
18 that you expressed, those are fee rates and  
19 compensation you expected to receive for the  
20 time that you spent reviewing this matter,  
21 correct?

22          A.    Yes.

23          Q.    What is your standard retainer for a  
24 matter like this involving excessive force?

1           A.    I don't have a retainer. I bill by an  
2 hourly rate.

3           Q.    What's your hourly rate?

4           A.    It's -- depends on the project, but  
5 for this project, it's either 200 or 225 an  
6 hour. I'm not sure exactly what it is.

7           Q.    Do you charge an hourly rate that's  
8 higher for other types of projects?

9           A.    Sometimes.

10          Q.    Did you charge a lower rate in this  
11 matter because it was a municipality that was  
12 requesting your services?

13          A.    No.

14          Q.    After you're done testifying today,  
15 what's the total cost to the City of Chicago  
16 for your services in this matter?

17          A.    I don't know.

18          Q.    Why don't you know?

19          A.    Because I haven't calculated the  
20 hours. Haven't prepared an invoice.

21          Q.    Okay. Give us a ballpark. Your best  
22 guess.

23          A.    I know I committed to no more than  
24 total, including travel, \$25,000.

1           Q.     How much have you received to date?

2           A.     Zero.

3           Q.     So you're actually not going to be  
4     paid by the City of Chicago until after you  
5     complete your testimony here today?

6           A.     I haven't taken the time to prepare an  
7     invoice.

8           Q.     As a result of your agreement to  
9     provide testimony in this matter, Mr. Gennaco,  
10    were you promised any future work by the City  
11    of Chicago?

12          A.     No.

13          Q.     Was it implied to you that if you  
14    testified here today, that you would receive  
15    future work?

16          A.     No.

17          Q.     Now, when the City of Chicago  
18    contacted you and asked you to provide  
19    professional services in this matter, what  
20    specifically did they ask you to do?

21          A.     Initially?

22          Q.     Initially.

23          A.     We'd like you to look at the summary  
24    of the investigation, as well as the

1 Superintendent's response, then the rebuttal to  
2 the police review board and tell us what you  
3 think.

4 MR. THOMPSON: May I approach, your Honor,  
5 with his report?

6 HEARING OFFICER WOOD: Okay.

7 BY MR. THOMPSON:

8 Q. Mr. Gennaco, I'm going to show you  
9 what I've marked as Exhibit 46. Do you  
10 recognize that document?

11 (WHEREUPON, said  
12 document was marked as  
13 Respondent Exhibit No.  
14 46 for Identification.)

15 A. I do.

16 Q. Okay. What is that document?

17 A. This document is a report that I  
18 prepared in preparation for this hearing.

19 Q. And what's contained in that exhibit  
20 is the basis for the opinions that you provided  
21 here today, correct?

22 A. In part.

23 Q. With respect to this report,

24 Mr. Gennaco, you provided a list of the

1 materials that you received, you reviewed and  
2 you relied upon, correct?

3 A. Yes, sir.

4 Q. And this report was prepared prior to  
5 you -- your visit yesterday at the location of  
6 the incident, correct?

7 A. Yes.

8 Q. And this report was provided prior to  
9 any contact with training personnel at the  
10 Chicago Police Department, correct?

11 A. Yes.

12 Q. You testified earlier that typically  
13 you don't do any additional investigation other  
14 than receive the completed investigation from  
15 the department or the agency that's asking you  
16 to review the matter, correct?

17 A. With regard to factual issues, that is  
18 correct.

19 Q. But in this particular case, you did  
20 decide that you were going to do some  
21 independent investigation, correct?

22 A. No.

23 Q. Well, was the purpose of going out to  
24 the location of the incident yesterday an

1 effort to contribute to your report?

2 A. It was an effort to view the scene.

3 Q. Okay. And viewing the scene is part  
4 of what's contained in your report of Exhibit  
5 46, correct?

6 MR. FIEWEGER: Objection. Foundation. The  
7 report was prepared. He visited it. It can't  
8 be in the report.

9 MR. THOMPSON: I'll rephrase the question.

10 HEARING OFFICER WOOD: Okay.

11 BY MR. THOMPSON:

12 Q. In your report, you made certain  
13 findings relative to the area where this  
14 pursuit occurred, correct?

15 A. Yes.

16 Q. And so going back to my question, you  
17 went out after this report was prepared to  
18 verify the information that's contained in  
19 Exhibit 46 relative to the area that this  
20 incident occurred, correct?

21 A. No.

22 Q. Okay. What's the purpose, then,  
23 Mr. Gennaco of going out to see the crime  
24 scene?

1           A.    Purpose was I wanted to see it, feel  
2    it, touch it, not taste it, but I wanted to  
3    sense it. I wanted to get a sense for what the  
4    dimensions were. What it looked like. I  
5    wanted to the degree possible put myself in the  
6    shoes of Mr. Bright or the officers, to get a  
7    sense of distance that photographs can never do  
8    significant justice to.

9           Q.    Okay. And you don't consider going  
10   out to review the area where this incident  
11   occurred as part of your investigation?

12          A.    No.

13          Q.    All right. When you went out there  
14   yesterday, did you go by yourself?

15          A.    No.

16          Q.    Were you accompanied by people?

17          A.    Yes.

18          Q.    Who accompanied you?

19          A.    Mr. Fieweger and an officer with the  
20   Chicago Police Department whose first name is  
21   Dave.

22          Q.    Why did an officer from the Chicago  
23   Police Department join you in your examination  
24   of the area of this incident?

1           MR. FIEWEGER: Objection. Relevance.

2           HEARING OFFICER WOOD: Why is it relevant?

3           MR. THOMPSON: Totality of the  
4    circumstances. The area --

5           HEARING OFFICER WOOD: The totality of the  
6    circumstances is focused to the event, to the  
7    day of the shooting.

8           MR. THOMPSON: And the area where the  
9    shooting occurred and the reason why  
10   Mr. Gennaco was accompanied by an armed  
11   individual is because that area is a --

12          HEARING OFFICER WOOD: You are speculating.

13          MR. THOMPSON: I was going to ask him why.

14          HEARING OFFICER WOOD: And you are leading.  
15    I'm not sure where you're going with this,  
16   because I'm not sure who accompanies him is  
17   relevant to his opinion in the case.

18          MR. GRACE: Your Honor, the point  
19   Mr. Thompson is trying to make here, this is  
20   the 3rd District. This isn't Edgebrook, it  
21   isn't Lincoln Park, isn't Beverly. This is a  
22   dangerous area.

23          HEARING OFFICER WOOD: I understand the  
24   point you are trying to make. I'm not sure you

1 can make it with this witness.

2 MR. GRACE: He felt -- sorry, Jim.

3 MR. THOMPSON: He's the expert that's --

4 HEARING OFFICER WOOD: You can ask him the  
5 questions you want to ask him, but they still  
6 have to be relevant.

7 MR. GRACE: Judge, the totality of the  
8 circumstances is that the policeman that's  
9 going to be used in the 3rd District in an area  
10 that Mr. Gennaco needs to take an armed guard  
11 with --

12 HEARING OFFICER WOOD: It is an argument  
13 you can make, but you need to make sure your  
14 questions solicit relevant testimony.

15 MR. THOMPSON: Okay.

16 BY MR. THOMPSON:

17 Q. When you went out to the area of the  
18 incident in the 3rd District to get a feel, did  
19 you get a feel that that area is an unsafe  
20 area?

21 A. No.

22 Q. You did not?

23 A. No.

24 Q. Okay. Part of what you reviewed was

1 the report that Eddie Johnson, the  
2 Superintendent of the Chicago Police  
3 Department, prepared in this matter, correct?

4 A. He signed it, correct.

5 Q. Okay.

6 MR. FIEWEGER: I'm going to object.

7 There's some ambiguity to the question.

8 There's two documents that Superintendent  
9 Johnson has signed that are in the file.  
10 There's the TRR report that he signed off on,  
11 and there's the non-concurrence letter that was  
12 submitted to the Board member. So I just ask  
13 for some clarification as to which document  
14 Mr. Thompson is referring to.

15 MR. THOMPSON: All right.

16 BY MR. THOMPSON:

17 Q. Let's talk about the TRR report. Did  
18 you review that?

19 A. Yes.

20 Q. And that was purported to be presented  
21 by the Superintendent of the Chicago Police  
22 Department, Eddie Johnson, correct?

23 A. I do not believe that was his title at  
24 the time.

1           Q.     Okay.  It was from Eddie Johnson,  
2 correct, the now Superintendent of the Chicago  
3 Police Department?

4           A.     That's my understanding, yes.

5           Q.     Do you know how many years Eddie  
6 Johnson has served as a Chicago police officer?

7           A.     No.

8           Q.     Are you familiar with now  
9 Superintendent Eddie Johnson's service record  
10 with the Chicago Police Department?

11          A.     No.

12          Q.     Do you know how many times over the  
13 course of now Superintendent Eddie Johnson's  
14 career he's been recognized for exceptional  
15 service to the citizens of the City of Chicago?

16          MR. FIEWEGER:  Objection.  Relevance.

17          HEARING OFFICER WOOD:  Absolutely.  You  
18 need to move on.

19          BY MR. THOMPSON:

20          Q.     You disagreed with the findings of  
21 Superintendent Eddie Johnson?  Now  
22 Superintendent Eddie Johnson.

23          A.     Are you referring to the --

24          Q.     TRR.

1           A.    Correct.

2           Q.    In fact, Eddie Johnson, the now  
3    Superintendent of the Chicago Police  
4    Department, found that Officer Brandon Ternand  
5    was justified in the use of force, correct?

6           A.    Again, with regard to which document,  
7    sir?

8           Q.    Either document.

9           A.    Yes.

10          Q.    All right. Referencing either  
11    document, Mr. Gennaco, you understand that now  
12    Superintendent Eddie Johnson asked that this  
13    matter be reviewed by Sergeant Byrd from the  
14    Chicago Police Department, correct?

15          MR. FIEWEGER: Objection. Relevance.

16          HEARING OFFICER WOOD: Sustained.

17          BY MR. THOMPSON:

18          Q.    You agree, Mr. Gennaco, that you  
19    reviewed both those documents, correct, the TRR  
20    and the Superintendent's non-concurrence  
21    letter, correct?

22          A.    Correct.

23          Q.    And in that letter or TRR, did  
24    Superintendent Eddie Johnson reference Sergeant

1 Byrd and Sergeant Byrd's findings?

2 MR. FIEWEGER: Objection. Relevance.

3 HEARING OFFICER WOOD: Sustained.

4 MR. THOMPSON: It's the basis of his  
5 opinion. That's a matter that he reviewed and  
6 a document that he reviewed in preparing and  
7 forming his opinions that he is expressing here  
8 today.

9 HEARING OFFICER WOOD: He already said he  
10 looked at those things. What else are you  
11 trying to solicit here?

12 MR. THOMPSON: The content of what's  
13 contained in the documents that he reviewed  
14 that are the basis for his opinions today.

15 HEARING OFFICER WOOD: It just sounds like  
16 you're trying to testify. You are bringing in  
17 the content and then asking him if he saw it,  
18 and he says, Yes, I saw it. So where does that  
19 get you?

20 MR. THOMPSON: I'm confused, Madam Hearing  
21 Officer.

22 HEARING OFFICER WOOD: I don't see the  
23 relevancy of this line of questioning. Do you  
24 have an actual question to ask him about his

1   opinions? About what did he think about the  
2   content? All you're doing is testifying to  
3   what these documents say.

4            MR. THOMPSON: First, I was trying to lay  
5   the foundation that he had reviewed Sergeant  
6   Byrd's opinions, what were Sergeant Byrd's  
7   opinions, and did he disagree with Sergeant  
8   Byrd's opinions.

9            HEARING OFFICER WOOD: And he's answered  
10   that.

11            MR. THOMPSON: We were just at Sergeant  
12   Byrd. I don't think he answered any of those  
13   questions.

14            HEARING OFFICER WOOD: I am going to give  
15   you a little bit more room. I'm trying to keep  
16   you relevant here.

17            MR. THOMPSON: Okay.

18   BY MR. THOMPSON:

19            Q. You reviewed Sergeant Byrd's findings  
20   relative to his review of the use of force by  
21   Brandon Ternand in this matter, correct?

22            A. I reviewed a document referencing  
23   Sergeant Byrd and his conclusions.

24            Q. Fine. You don't know Sergeant Byrd,

1 do you?

2 A. No.

3 Q. In the course of doing some type  
4 of -- you didn't do any investigation relative  
5 to Sergeant Byrd, correct? Who he was, how  
6 long he's been on the job, anything, correct?

7 A. There's a reference in the document  
8 about that.

9 Q. Okay. What was the reference?

10 A. I'd have to take a look at it to  
11 refresh my memory.

12 Q. Well, in summary, the reference  
13 relative to Sergeant Byrd is that he is a  
14 veteran police officer with the Chicago Police  
15 Department and a -- veteran sergeant of the  
16 Chicago Police Department, correct?

17 A. That's my -- that's my recollection,  
18 yes.

19 Q. And Sergeant Byrd came to the  
20 conclusion that Officer Brandon Ternand used  
21 justifiable force in this matter, correct?

22 A. That's what the document says.

23 Q. Did you review Officer Ternand's  
24 service record in this matter?

1           A.    I'm not sure what you mean by service  
2 record.

3           Q.    Let me narrow it down.

4                   Did you review Officer Ternand's  
5 complimentary history with the Chicago Police  
6 Department?

7           A.    There were references to that in  
8 the -- in the Superintendent Johnson's  
9 document.

10          Q.    Do you agree that Officer Ternand is a  
11 decorated Chicago police officer?

12          MR. FIEWEGER: Objection. Foundation.

13          HEARING OFFICER WOOD: What's the  
14 foundation?

15          MR. THOMPSON: He said he reviewed it.

16          HEARING OFFICER WOOD: He said he saw it,  
17 but you're asking him to draw a conclusion in  
18 terms of whether he knows if the officer's been  
19 decorated?

20          MR. THOMPSON: Correct.

21 BY MR. THOMPSON:

22          Q.    From your review of Officer Ternand's  
23 complimentary history with the Chicago police  
24 Department, do you agree that Officer Ternand

1 is a decorated Chicago police officer?

2 A. I'm not sure I have enough information  
3 to make that conclusion.

4 Q. Okay. You agree during the course of  
5 your testimony today you were providing  
6 opinions relative to Officer Ternand's  
7 character, namely that he was lying about the  
8 account of events, correct?

9 A. No.

10 Q. So you believe his account of events?

11 A. No.

12 Q. All right. In the course of reviewing  
13 the complimentary history, was there any  
14 reference that you reviewed to who provided or  
15 who gave Mr. -- Officer Ternand those  
16 decorations or commendations?

17 A. I'm not sure I understand the  
18 question.

19 Q. Well, you agree that Officer Ternand  
20 is a decorated Chicago police officer?

21 A. No, I don't have enough information to  
22 make that conclusion.

23 Q. Was that important at all to you in  
24 forming any of your opinions in this matter?

1           A.    Not really.

2           Q.    All right. In the course of your  
3 review of this matter, did you review any  
4 information relative to Officer Ternand's  
5 disciplinary history?

6           A.    No.

7           Q.    All right. Can I direct your  
8 attention to Exhibit 46?

9           A.    Yes.

10          Q.    On page one, you reference the  
11 materials evidencing information considered at  
12 the time of this -- relative to providing your  
13 opinions in this matter, correct?

14          A.    Yes.

15          Q.    Now, you testified that you reviewed  
16 certain studies, correct?

17          A.    Reports.

18          Q.    I think you used the word studies,  
19 didn't you, Mr. Gennaco?

20          A.    No, I think opposing counsel used the  
21 word studies. It's more like a report.

22          Q.    You didn't confirm that you reviewed  
23 studies?

24          A.    Better characterization are reports.

1 Q. So you didn't review any studies in  
2 this particular matter, correct?

3           A. I think the better and accurate  
4 depiction is reports. If you want to call them  
5 studies, you can call them studies. Either  
6 way, I think we're quibbling about terminology,  
7 but it's a report or study.

8 Q. All right. Not really. But what you  
9 reviewed in forming your opinions is contained  
10 on page one and nothing else, correct?

11 A. No.

12 Q. Okay. It says materials, evidence and  
13 information considered at the time you created  
14 this report, correct?

15 A. Yes.

16 Q. And you provided a list, correct?

17 A. Yes.

18 Q. That was intended to be a complete  
19 list, correct?

20 A. You're talking about the incident  
21 itself? Absolutely a complete list, at the  
22 time I completed the report.

23 My experience and my knowledge of  
24 other articles or reports is not pertaining to

1 that particular incident.

2 Q. Okay. So, again, you didn't amend  
3 this report at any time, correct?

4 A. No.

5 Q. And so the opinions that you express  
6 in this report are based solely on the  
7 materials in evidence and information that's  
8 considered -- that you considered that's listed  
9 on page one, correct?

10 A. No.

11 Q. Wasn't the purpose of identifying the  
12 paragraph on page one entitled Materials and  
13 Evidence and Information Considered was for the  
14 purpose of letting anyone know who read this  
15 report that this is what you relied upon?

16 A. With regard to the incident, at the  
17 time I prepared the report, yes, sir.

18 Q. I guess what I'm saying is, did you  
19 subsequently review some additional matters  
20 that's not contained in the list on page one?

21 A. Yes.

22 Q. And did you ever amend that report?

23 A. No.

24 Q. And whatever you reviewed subsequently

1 came after you drafted this report, correct?

2 A. Yes.

3 Q. Can you turn to page four of your  
4 report? You provided testimony relative to the  
5 significance of Graham versus Connor, correct?

6 A. Yes.

7 Q. And you expressed your understanding  
8 in the last full paragraph as to the  
9 significance of Graham versus Connor, correct?

10 A. Yes.

11 Q. And it's fair to say that you believe  
12 that in determining police used excessive force  
13 under the 4th Amendment, the relevant inquiry  
14 is whether the officer's actions were  
15 objectively reasonable in light of the totality  
16 of the circumstances, correct?

17 A. Yes.

18 Q. And when you review or consider what's  
19 objectively reasonable, there's three things  
20 that you consider, right? Severity of the  
21 crime at issue?

22 A. Correct.

23 Q. Whether the suspect poses immediate  
24 threat to the safety of the officers or others,

1 correct?

2 A. Yes.

3 Q. And whether the person is actively  
4 resisting arrest or attempting to evade arrest  
5 by flight, correct?

6 A. Yes.

7 Q. So one of the issues that you've  
8 considered in forming your opinion today, or in  
9 this report, is the severity of the crime,  
10 correct?

11 A. Yes.

12 Q. Did you consider the severity of the  
13 crime?

14 A. Yes.

15 Q. In considering the severity of the  
16 crime, Mr. Gennaco, did you consider how the  
17 citizens of Chicago perceive gun and gun  
18 violence?

19 MR. FIEWEGER: Objection. Relevance.

20 HEARING OFFICER WOOD: Sustained.

21 BY MR. THOMPSON:

22 Q. Did you consider how the Chicago  
23 Police Department considers the severity of gun  
24 violence and guns in the City of Chicago?

1           A.    No. I considered the statutes.

2           Q.    All right.

3           A.    In Illinois.

4           Q.    Graham V Connor doesn't limit severity  
5    of crime to statutes alone, does it?

6           A.    I don't know.

7           Q.    Well, you're an expert, Mr. Gennaco.

8    Does it or doesn't it?

9           A.    I think it's the statutes that are  
10   predominant.

11          Q.    All right. But you don't know for  
12   sure, right? Is that what your opinion is?

13          A.    My analysis, and every expert that I  
14   know of, analyzes the severity of the crime  
15   based on the statutes that would be available  
16   as a prosecutor prosecuting the individual  
17   being apprehended.

18          Q.    All right. You would agree that the  
19   Chicago Police Department dedicates a portion  
20   of their manpower every single day for the  
21   single and sole purpose of attacking gun and  
22   gun violence in the City of Chicago, correct?

23          MR. FIEWEGER: Objection. Foundation.

24          HEARING OFFICER WOOD: I'm not even

1 understanding why that question is relevant.

2 Where are you going?

3 MR. THOMPSON: The crime of gun and gun  
4 violence is so significant to the Chicago  
5 Police Department, that they dedicate a portion  
6 of their manpower for the sole purpose of  
7 addressing gun and gun violence in the City of  
8 Chicago.

9 HEARING OFFICER WOOD: Where's the  
10 foundation for that?

11 MR. THOMPSON: I'm asking if he knows that.

12 HEARING OFFICER WOOD: But there is no  
13 foundation for what you're saying.

14 MR. THOMPSON: What do you mean? We've had  
15 Officer Ternand, Officer Bruno, Officer Razo  
16 come in.

17 HEARING OFFICER WOOD: Who talked about the  
18 elements in the 3rd District. That's what they  
19 talked about. The level of crime in the  
20 district, not the whole City of Chicago.

21 MR. THOMPSON: Okay. I'll limit it to the  
22 3rd District.

23 HEARING OFFICER WOOD: So you're asking him  
24 if he knows the crime rates in the 3rd

1      District?

2            MR. THOMPSON: I'm asking him that because  
3      that is a portion of what is meant by the  
4      serious nature of the crime as expressed in  
5      Graham V Connor that he introduced here today.

6            HEARING OFFICER WOOD: But he already  
7      testified that he looks at the statute. He  
8      answered your question. You want to argue with  
9      him and tell him that he should be doing  
10     something else, but he answered your question.

11        MR. THOMPSON: All right.

12        BY MR. THOMPSON:

13            Q.     So I don't aggravate the Hearing  
14      Officer any further, would it be fair to say,  
15      Mr. Gennaco, that you have no knowledge how the  
16      Chicago Police Department attacks gun and gun  
17      violence in the 3rd District?

18            A.     That's a fair statement.

19            Q.     Would it be fair to say, Mr. Gennaco,  
20      that you have no knowledge with respect to the  
21      statistical data of violent crimes,  
22      specifically guns, gun violence, murders,  
23      shootings in the 3rd District where this  
24      incident happened?

1           A.    That also is accurate.

2           Q.    So in forming your opinions today, you  
3 did not -- or in your report you never  
4 considered those two issues, right, how the  
5 Chicago Police Department addresses gun and gun  
6 violence in the 3rd District, and you never  
7 considered the level of violence and gun  
8 violence in the 3rd District where this  
9 incident happened; is that fair?

10          A.    If I could break the two questions  
11 down, the answer to the first is, I did not  
12 consider the first, because I did not have any  
13 awareness.

14                   The second, I did consider the  
15 fact that based on the testimony of witnesses  
16 in the investigation, that they testified that  
17 this area had a higher level of violence than  
18 maybe some of the other neighborhoods in  
19 Chicago.

20          Q.    Nothing with brass tacks with respect  
21 to numbers or the data, but just a general  
22 summary of the level of violence; is that fair?

23          A.    I read the accounts of the involved  
24 officers, and I took their accounts at face

1 value and considered it.

2 Q. And you considered that it was a very  
3 high level of violent crimes in the 3rd  
4 District in 2012?

5 A. I wouldn't put it very high crime. My  
6 understanding, based on the officers'  
7 statements, have no reason to discredit them in  
8 regard to this point, is that it was a higher  
9 crime area than other parts of Chicago.

10 Q. Well, in your course of your  
11 experience as a prosecutor and reviewing  
12 police-involved shootings, do you review data  
13 relative to violent crimes?

14 A. Depends on the project and the purpose  
15 of my review.

16 Q. Have you done it in the past?

17 A. Depends on the project, yes.

18 Q. If in 2012 in the 3rd District in the  
19 City of Chicago there were 6,599 violent crimes  
20 in one year, would you consider that to be  
21 high?

22 A. That number doesn't mean anything to  
23 me. Compared to what? I would need to know  
24 more. I would need to know context of the

1 numbers. I would need to know how it compares  
2 to the rest of the City. That number in and of  
3 itself means almost nothing.

4 Q. Okay. Well, does 42 homicides in 2012  
5 in the 3rd District, is that a high level?

6 MR. FIEWEGER: Objection. Relevance.

7 HEARING OFFICER WOOD: I think it's the  
8 same problem. It has no context.

9 MR. THOMPSON: All right.

10 BY MR. THOMPSON:

11 Q. Mr. Gennaco, when considering a high  
12 violent crime area, what do you take into  
13 consideration?

14 A. Kind of depends -- does depend on the  
15 project. And, again, I have no disagreement  
16 with you about the supposition that the area in  
17 which this -- address in which this incident  
18 occurred is within an area that has high crime.

19 Q. It's really more than that that I'm  
20 asking you, Mr. Gennaco. It's not high crime,  
21 it's high violent crime.

22 A. I'll even accept that, too.

23 Q. Okay. So let's talk about statutes as  
24 it relates to the severity of a crime. Okay?

1    Are we on the same page about this?

2            A.    Yes.

3            Q.    So in considering the severity of the  
4    crime, you look to the Illinois compiled  
5    statutes relative to firearms; is that fair?

6            A.    In part.

7            Q.    And you would agree that in 2012,  
8    there was no law relative to conceal and carry,  
9    correct?

10          A.    I'm not sure I understand the  
11   question.

12          Q.    Was there a conceal and carry law in  
13   the State of Illinois in 2012 that let any  
14   person conceal and carry a weapon other than  
15   law enforcement?

16          A.    That's my understanding.

17          Q.    In this particular matter, when  
18   Officer Ternand and Officer Razo see Dakota  
19   Bright brandishing a firearm, that's a crime,  
20   correct?

21          A.    I'm not sure the facts suggest  
22   brandishing.

23          Q.    Okay. When Officer Ternand and  
24   Officer Razo observed Dakota Bright in the

1     mouth of the alley with a firearm not concealed  
2     in his hand, he was committing a crime,  
3     correct?

4           A.    It depends on whether he would have  
5     been considered an adult.  Or tried as an  
6     adult.

7           Q.    Okay.  He was committing a crime as a  
8     juvenile?

9           A.    Juveniles are not considered -- it's  
10    not considered a crime if you proceed against  
11    an individual as a juvenile, juvenile  
12    adjudication, the status of the offender has a  
13    lot to do with whether it's a, quote, crime.

14          Q.    Are you suggesting that a juvenile  
15    with a firearm in his hand, not concealed, in  
16    the City of Chicago in 2012 is not committing a  
17    crime?

18          A.    I'm suggesting it's a juvenile  
19    offense, which is not considered an adult  
20    crime.

21          Q.    All right.  Let's talk about an adult  
22    first.  Okay?  What distinguishes an adult from  
23    a juvenile in the State of Illinois in 2012?

24          A.    In part it's dependent on what the

1 prosecutor decides to do and how the prosecutor  
2 intends to go forward on the case. But,  
3 generally speaking, with some exceptions, and  
4 in some cases prosecutors have discretion to  
5 charge an individual who is a juvenile as an  
6 adult, but that's not usually done.

7 Q. Okay. It's age, right?

8 A. Age.

9 Q. Age 18, correct?

10 A. That's right.

11 Q. So if you're 18 years or older in  
12 2012, and you're carrying a firearm in your  
13 right hand, and it's not concealed, what class  
14 offense is that in 2012 in the State of  
15 Illinois?

16 A. It's at least a Class A misdemeanor if  
17 you are an adult.

18 Q. It is a Class 4 felony, correct?

19 A. It can be.

20 Q. Let's talk about a Class A  
21 misdemeanor. That only applies to a person  
22 having a firearm in their home or their place  
23 of business and not having a FOID card,  
24 correct?

1           A.    The card is important, yes, sir.

2           Q.    Do you agree that it's only a Class A  
3   misdemeanor if you are possessing that firearm  
4   in your home or in your place of business?

5           A.    That's correct.

6           Q.    All right. Well, we know from the  
7   facts of this case that Dakota Bright wasn't in  
8   his home or in his place of business at the  
9   time that he was in the alley with a firearm in  
10   his right hand, correct?

11          A.    We also know he wasn't an adult.

12          Q.    No, we don't. We don't know -- okay.  
13   Mr. Gennaco, you didn't read anything in this  
14   report that stated that Officer Ternand and  
15   Officer Razo knew the age of Dakota Bright when  
16   they saw him in the alley; is that true? Yes  
17   or no?

18          A.    Could you rephrase the question, sir?

19          Q.    There's nothing that you reviewed in  
20   this case that any of the officers knew the age  
21   of Dakota Bright at the time that they observed  
22   him in the alley brand -- carrying a firearm  
23   not concealed; is that fair?

24          A.    That is correct, sir.

1           Q.     So 18 years or older, not in your home  
2     or your abode, it's a Class 4 felony in the  
3     State of Illinois, correct?

4           A.     My understanding it's a Class 3 felony  
5     or Class A misdemeanor. That's my  
6     understanding.

7           Q.     Okay. Did you know, Mr. Gennaco, that  
8     possessing a firearm, whether you want to call  
9     it a Class 3 felony or a Class 4 felony in the  
10    State of Illinois in 2012 was nonprobationable?

11          A.     I don't know that.

12          Q.     Did you know -- did you know of all of  
13    the Class 4 felonies in the State of Illinois  
14    in 2012, the only nonprobationable felony  
15    carved out by the legislature was a UUW?

16          A.     No.

17          Q.     You weren't aware of that?

18          A.     No.

19          Q.     It's important to know that  
20    information, right, Mr. Gennaco? Because you  
21    are evaluating the severity of the crime, and  
22    you testified that it's the statutes that  
23    control, and you are unaware of the statutes;  
24    is that fair?

1           A.    No, it's not fair.

2           Q.    Let's talk about the class of crime if  
3   the 18 year old or older adult is possessing a  
4   firearm, and they're a convicted felon.  What  
5   class is that?

6           A.    I have no idea.

7           Q.    Would you believe me if I said that  
8   was a Class 2 felony?

9           A.    No.

10          Q.    Would you believe me if I told you  
11   that that was nonprobationable?

12          A.    No.

13          Q.    Would you believe me if I told you  
14   that the minimum sentence is three to seven  
15   years on a Class 2 felony, UUW by a felon?

16          A.    No.

17          Q.    Do you agree, Mr. Gennaco, that the  
18   firearm recovered in this incident was loaded?

19          A.    Based on the report, yes.

20          Q.    Well, right, based upon the report,  
21   the firearm that was recovered in this matter  
22   was loaded, correct?

23          A.    Based on the report, yes, sir.

24          Q.    And in your review of the criminal

1 statutes, there's a whole section in the  
2 criminal code relative to ammunition. Are you  
3 aware of that?

4 A. Not specifically.

5 Q. Are you aware of the difference  
6 between a person possessing a firearm that's  
7 not loaded versus a person that's possessing a  
8 firearm that's loaded under the criminal code?

9 A. Generally it's a more severe offense  
10 if the firearm is loaded.

11 Q. Would it be fair to say, Mr. Gennaco,  
12 you didn't exhaustively review the criminal  
13 statutes in Illinois relative to the severity  
14 of the crime of possessing a firearm loaded in  
15 public in 2012?

16 A. I did research, and I came to the  
17 conclusion it was not a forcible felony, and  
18 concluded what the class was for the offense.

19 Q. In preparing your opinions,  
20 Mr. Gennaco, did you review the deadly force  
21 statutes in the State of Illinois in 2012, 720  
22 ILCS 5/2-8?

23 A. My focus was on the general order.

24 Q. Okay. So is that a no?

1           A.    No, it's not a no.  My focus was on  
2  the general order.

3 Q. All right.

4 THE VIDEOGRAPHER: We're now off the  
5 record. Just have to change disks.

6 (Brief pause.)

7 HEARING OFFICER WOOD: Back on the record.

8 Continue with your cross.

9 BY MR. THOMPSON:

10           Q.     So, Mr. Gennaco, you're familiar with  
11       the forcible felony statute in the State of  
12       Illinois in 2012?

13 A. I have reviewed it, yes.

14 Q. Are you conversant on the forcible  
15 felony statute?

16           A.     I'm conversant to the degree I  
17     evaluated the crime that may have been  
18     committed in this case.

19 Q. Okay. So you agree then that a  
20 forcible felony as defined in the statute  
21 provides a list, including in that list that  
22 any other felony which involves the use of or  
23 threat of physical force or violence against  
24 any individual is a forcible felony; is that

1 true?

2 A. As defined in the general order.

3 Q. Okay. Is that also defined in the  
4 Illinois statute?

5 A. I focused on the general order. You'd  
6 have to show me the statute. I don't know  
7 anything about that.

8 Q. The next prong of the test in  
9 considering objective reasonableness is whether  
10 the suspect poses an immediate threat to the  
11 safety of the officers or others, correct?

12 A. Yes.

13 Q. All right. So certainly when Dakota  
14 Bright is in the general public, walking or  
15 creeping down an alley, he poses an immediate  
16 threat to any person that's in the area,  
17 correct?

18 MR. FIEWEGER: Object to the  
19 characterization of creeping. No testimony he  
20 was creeping.

21 MR. THOMPSON: Okay. Fine. I'll rephrase  
22 the question.

23 HEARING OFFICER WOOD: Thank you.

24 BY MR. THOMPSON:

1           Q.    Mr. Gennaco, a person, in this case  
2   Dakota Bright, walking down a sidewalk and into  
3   an alley poses -- with a handgun, poses an  
4   immediate threat to any pedestrian or person in  
5   the immediate area, correct?

6           A.    Not correct.

7           Q.    Okay. A person walking down the  
8   sidewalk as Dakota Bright was poses an  
9   immediate threat to any motorist in the area,  
10   correct?

11          A.    Not correct.

12          Q.    Let's talk about the officers. When  
13   the officers see Dakota Bright in the alley  
14   standing in front of their approaching vehicle  
15   with a firearm in his right hand, he poses an  
16   immediate threat to those officers, doesn't he?

17          A.    He does not.

18          Q.    If Dakota Bright fired that weapon at  
19   the officers, they could be struck or injured,  
20   correct?

21          A.    Yes.

22          Q.    And there was nothing preventing  
23   Dakota Bright from doing such a thing at the  
24   time that the officers encountered him, was

1 there?

2 A. He could have done that, and  
3 that's assuming that he was armed.

4 Q. And you agree that the last prong in  
5 that test under Graham V Connor is whether or  
6 not in this instance Dakota Bright was actively  
7 resisting arrest or attempting to evade arrest  
8 by flight, correct?

9 A. That's correct.

10 Q. Well, that's undisputed in this  
11 instance, that, in fact, that's exactly what  
12 Dakota Bright was doing, right?

13 A. I agree with that.

14 Q. Graham V Connor also requires that you  
15 take into consideration the totality of the  
16 circumstances; is that fair?

17 A. Exactly, correct.

18 Q. And when you were considering these  
19 facts as it applies to the standards set forth  
20 in Graham V Connor, and I'm going to list some  
21 things, just let me know of you took those into  
22 consideration, okay?

23 Did you take into consideration  
24 the level of violent crime in the 3rd District

1 in this particular area at the time of the  
2 occurrence?

3 A. I took into consideration the  
4 statements of the officers indicating it was a  
5 high-crime area.

6 Q. Is that yes?

7 A. No, it's not yes.

8 Q. Did you take into consideration the  
9 level of gang violence and activity in the 3rd  
10 District in the specific area at the time of  
11 this particular occurrence?

12 A. I took into consideration the  
13 information about potential gangs and gang  
14 violence as indicated in the report that was  
15 prepared by the Chicago Police Department and  
16 IPRA.

17 Q. Did you take into consideration that  
18 this individual, Dakota Bright, was carrying a  
19 firearm in broad daylight?

20 A. I took into consideration the belief  
21 by the officers that Dakota Bright may have  
22 been carrying a firearm in the daytime.

23 Q. Let's go with yes or no, so I can get  
24 through these a little faster.

1           A.    I'm sorry. I can't answer yes or no  
2 if I can't --

3           Q.    Fair enough. Did you take into  
4 consideration the fact that Dakota Bright was  
5 not making any effort to conceal the weapon  
6 prior to encountering the officers?

7           A.    I'm not sure those facts were in  
8 evidence, so I'm not sure I can answer that  
9 question.

10          Q.    Well, we agree that Dakota Bright was  
11 observed by the officers standing in the mouth  
12 of the alley in broad daylight and not making  
13 any effort until the officers saw him to  
14 conceal that firearm, correct?

15          A.    That's fair.

16          Q.    Did you take that into consideration?

17          A.    I did.

18          Q.    Did you take into consideration the  
19 experience of Officer Razo and Officer Ternand  
20 when they observed Dakota Bright in the alley  
21 with his firearm in his right hand?

22          A.    I'm not sure I understand what you  
23 mean by experience.

24          Q.    Well, in the course of your

1 investigation, did you have any understanding  
2 with respect to the level of experience that  
3 Officer Ternand had as a tactical officer in  
4 the 3rd District at the time of this  
5 occurrence?

6 A. Yes.

7 Q. Did you take into consideration the  
8 possibility or probability that Dakota Bright  
9 was intending to commit a crime with his  
10 firearm?

11 A. If you're asking about the  
12 possibility, yes.

13 Q. All right. Can I ask you to direct  
14 your attention to page seven of your report?

15 A. I have it.

16 Q. Your paragraph identified as one in  
17 the middle.

18 A. Yes.

19 Q. And in that paragraph, you state that  
20 Ternand shot and killed Dakota Bright because  
21 he was getting away, correct?

22 A. I said that the evidence suggests or  
23 indicates that.

24 Q. All right. If Dakota Bright was, in

1 fact, not getting away, but was being cornered  
2 or trapped by the Chicago police officer's  
3 tactics, and he was, in fact, closer to being  
4 apprehended, would you agree that that would  
5 have an effect on your opinion?

6 A. No.

7 Q. Under subparagraph -- under paragraph  
8 one, paragraph A, you discussed the forensics  
9 in this case, correct?

10 A. Yes.

11 Q. In the first comment that you make  
12 relative to the forensics in this case, is  
13 certainly the entrance of a bullet does not  
14 determinatively proof that Dakota Bright was  
15 facing away at the time Officer Ternand decided  
16 to use deadly force --

17 A. Correct.

18 Q. -- is that correct?

19 A. Absolutely.

20 Q. Did you review any other forensic  
21 information in this case relative to the bullet  
22 fired by Officer Ternand?

23 A. I reviewed the information that was in  
24 the file.

1           Q.    Okay.  Do you remember reviewing the  
2 report from Joseph Thibault from the Illinois  
3 State Police?

4           A.    As I sit here today, no.

5           MR. THOMPSON:  May I approach, your Honor?

6           HEARING OFFICER WOOD:  Yes.

7 BY MR. THOMPSON:

8           Q.    I'm going to show you what was  
9 previously marked as Exhibit No. 18.

10           Have you had a chance to review  
11 that document, Mr. Gennaco?

12           A.    Yes.

13           Q.    Did you review that document during  
14 the course of your investigation of this  
15 incident?

16           A.    As I sit here today, I have no  
17 independent recollection of doing that.  If it  
18 was in the file, I'm certain I did.

19           Q.    And that report indicates that the  
20 forensic lab with the Illinois State Police  
21 believe that there's a possibility that the  
22 shot fired by Officer Ternand struck some other  
23 metal object prior to striking Dakota Bright,  
24 correct?

1           A.    That possibility is there.

2           Q.    And you would agree, Mr. Gennaco, that  
3   nowhere in your report do you reference  
4   anything under your subsection of forensic  
5   information that there's a possibility that the  
6   round fired by Officer Ternand struck or  
7   ricochetted off of an object prior to striking  
8   Dakota Bright; is that fair?

9           A.    Yes.

10          Q.    If, in fact, Mr. Gennaco, that  
11   analysis by the Illinois State Police is  
12   accurate, wouldn't you agree that Officer  
13   Ternand's discharged round that struck Dakota  
14   Bright was lucky?

15          A.    No.

16          Q.    Are you suggesting that if you fire a  
17   round and it ricochets off of something and  
18   strikes your target, that that's a good shot?

19          A.    I'm not suggesting there was a  
20   ricochet.

21          Q.    Here's what I'm saying to you,  
22   Mr. Gennaco, is that the Illinois state lab did  
23   a forensic analysis of the round fired by  
24   Officer Ternand, and they found a discrepancy

1 in that round, namely they found a metallic  
2 substance on that round, correct?

3 A. Correct.

4 Q. And based upon that, they opine that  
5 it's possible that that round struck some metal  
6 object prior to striking Dakota Bright,  
7 correct?

8 A. No.

9 Q. You don't agree with that?

10 A. I don't agree with that.

11 Q. In the event, Mr. Gennaco, that  
12 Officer Ternand's round did, in fact, strike or  
13 ricochet off of an object prior to striking  
14 Dakota Bright, would you agree that is a lucky  
15 shot?

16 MR. FIEWEGER: Objection. Vague and  
17 argumentative. I don't know what that means.

18 HEARING OFFICER WOOD: And asked and  
19 answered.

20 BY MR. THOMPSON:

21 Q. If you are sighting up a weapon to  
22 strike a target, you're not sighting that round  
23 with the intention that it strike an object  
24 before it strikes your target, are you?

1           A.     Correct.

2           Q.     Can I direct your attention,

3     Mr. Gennaco, to page eight.

4           A.     Okay.

5           Q.     We're talking on the section B, the  
6     first paragraph, you indicate that Officer  
7     Ternand was approximately 50 feet from Dakota  
8     Bright when he fired his weapon, correct?

9           A.     Yes.

10          Q.     Would you agree, Mr. Gennaco, that at  
11     the time Officer Ternand discharged his  
12     firearm, he was closer to Dakota Bright than a  
13     professional pitcher is to a batter?

14          MR. FIEWEGER: Objection. Foundation.

15          THE WITNESS: I'm not sure I know.

16          MR. THOMPSON: Okay.

17     BY MR. THOMPSON:

18          Q.     Are you aware?

19          A.     I should know, but I don't.

20          Q.     Let me ask you, Mr. Gennaco, are you a  
21     baseball fan?

22          A.     I'm a baseball fan.

23          Q.     Would you agree that the distance from  
24     a pitcher to a batter is 60 feet, 6 inches?

1           A.    I don't know.

2           Q.    Okay. Do you consider the fence to be  
3    a barrier, on page eight, correct?

4           A.    Could you specify which fence you are  
5    talking about?

6           Q.    Sure. You indicate the six-foot  
7    fence, that's a barrier, correct? You say  
8    facing the barrier.

9           A.    It is a barrier.

10          Q.    Barriers are generally insurmountable;  
11    wouldn't you agree?

12          A.    No.

13          Q.    Well, there was certainly nothing  
14    based upon Officer Ternand's age and experience  
15    that prevented him from traveling over a  
16    six-foot fence, is there?

17          A.    If you are talking about experience, I  
18    would hope his officer safety considerations  
19    would kick in there.

20          Q.    We're not talking about that. We're  
21    talking about his ability to go -- physically  
22    go over a fence, a six-foot fence.

23          A.    Are you retracting the bit about  
24    experience?

1 Q. I'm asking the questions, Mr. Gennaco.

2 A. I'm trying to get a clarification.

3 Q. All right. One of the basis for you  
4 believing that he was getting away was because  
5 Officer Ternand was facing a barrier, correct?

6 A. There was at least one barrier between  
7 him and the individual.

8 Q. And that's a fence; is that fair?

9 A. It was a fence.

10 Q. And you're not suggesting that Officer  
11 Ternand was physically unable to climb over a  
12 fence, are you?

13 A. No.

14 Q. You also indicated that Officer  
15 Ternand was frustrated at the time that he  
16 discharged his firearm; is that fair?

17 A. He may have been.

18 Q. Well, you don't say may have been, you  
19 say he was.

20 A. I said the frustration of the moment.

21 Q. Okay. In your reports that you  
22 reviewed and the information you reviewed in  
23 this matter, Officer Ternand never said that he  
24 was frustrated, did he?

1           A.    No, he didn't.

2           Q.    In fact, at the time that Officer  
3    Ternand encountered the six-foot fence, Officer  
4    Bruno was paralleling the offender, Dakota  
5    Bright, in the alley, correct?

6           A.    He was running in that direction, yes.

7           Q.    And Officer Sledge was paralleling the  
8    subject on Indiana in his vehicle, correct?

9           A.    Depends on when -- what time you're  
10   asking.   Sometimes he was stationary in cars,  
11   sometimes he was moving.

12          Q.    When you considered using the word  
13   frustration, did you take into consideration  
14   the short distance of the foot pursuit by  
15   Officer Ternand?

16          A.    I did.

17          Q.    Did you take into consideration the  
18   short amount of time that Officer Ternand had  
19   been involved in the foot pursuit?

20          A.    I did.

21          Q.    Did you take into consideration the  
22   fact that the tactical officers, specifically  
23   Officer Ternand, are involved daily in foot  
24   pursuits similar to this?

1           A.    I don't know that.

2           Q.    Did you take into consideration the  
3    fact that 3rd District tactical officers like  
4    Officer Ternand encounter obstacles all the  
5    time in foot pursuits?

6           A.    I don't know that.

7           Q.    Did you take into consideration that  
8    Officer Ternand and the other officers in this  
9    matter believed that based upon the tactics  
10   that they were using, that they had Dakota  
11   Bright in a box?

12          A.    No.

13          Q.    Did you believe -- did you take into  
14    consideration the fact that the officers,  
15    specifically Officer Ternand, believed that  
16   Dakota Bright was trapped?

17          A.    No.

18          Q.    You used in relation to the Dakota  
19    Bright getting away, the fact that you believed  
20   that the exertion being expended by Officer  
21   Ternand was contributing to Mr. Dakota Bright  
22   getting away?

23          A.    No.

24          Q.    You believe that the exertion that

1      Officer Ternand was using in this pursuit was a  
2      contributing factor to why he discharged a  
3      round at Dakota Bright?

4            A.    Yes.

5            Q.    Did you take into consideration any of  
6      the physical qualities of Officer Ternand  
7      relative to whether he was exerted or not?

8            A.    No.

9            Q.    It was a generic expression?

10          A.    Based on experience and studies.

11          Q.    Again, are you referencing some  
12     studies that you didn't mention in this exhibit  
13     under materials in evidence and information  
14     considered?

15          A.    No. It's my experience watching  
16     officers involved in hightail foot pursuits and  
17     jumping over fences and seeing their level of  
18     exertion afterwards.

19          Q.    Is that on video or actually being out  
20     there with them?

21          A.    Being out there and actually doing it  
22     myself.

23          Q.    And when you reviewed the report,  
24     Officer Ternand never said that he was tired,

1       winded or exerted, did you?

2           A.    I'm not sure he was asked, but he did  
3       not say that.

4           Q.    Did you consider under subsection B  
5       how many similar incidents, these foot  
6       pursuits, Officer Ternand had been in  
7       previously?

8           A.    I considered one deadly force incident  
9       that he had been involved in previously that he  
10      testified to.

11          Q.    But that's it, right?

12          A.    That is my -- that was the basis for  
13      my consideration, yes.

14          Q.    So if Officer Ternand testified that  
15      they are regularly involved in similar foot  
16      pursuits on a daily basis, would that affect  
17      your opinion?

18          A.    No.

19          Q.    Would it affect your opinion if the  
20      3rd District officers, Bruno and Razo,  
21      testified that the foot pursuit is a -- similar  
22      to this, is a regular occurrence to them on a  
23      daily basis, would that affect your opinion?

24          A.    No.

1 MR. THOMPSON: Can we take a short break?

2 HEARING OFFICER WOOD: We can go off the  
3 record for a second.

4 (Recess.)

5 MR. GRACE: Your Honor the last couple of  
6 questions of cross I was going to take over the  
7 cross and do the last remaining questions on  
8 cross, if that's okay.

9 HEARING OFFICER WOOD: Any objection?

10 MR. FIEWEGER: No.

11 HEARING OFFICER WOOD: That's fine.

12 MR. GRACE: May I proceed?

13 HEARING OFFICER WOOD: You may proceed.

14 **CROSS-EXAMINATION**

15 BY MR. GRACE:

16 Q. So, Mr. Gennaco, as I understood your  
17 direct examination, you had a problem with the  
18 forensics of the case; is that right?

19 A. I don't know what you mean by --

20 Q. You testified on direct examination  
21 that when you looked at the -- I think you have  
22 it on -- it's on page seven, forensics evidence  
23 shows the bullet strikes entered the back of  
24 Dakota's head. And you found that problematic

1 with respect to the use of force used, right?

2 A. It was a factor that I considered.

3 Q. One of the factors you considered.

4 You considered that the fact that the bullet  
5 entered the back of the head, which more than  
6 likely says to you that his head would have  
7 been turned away from Officer Ternand; is that  
8 correct?

9 A. It was clear that at the time that the  
10 bullet struck his head, he was away from  
11 Ternand.

12 My testimony was that it was more  
13 likely that the time -- based on the  
14 description of the event at the time that  
15 Officer Ternand used deadly force, he would  
16 also have been facing away from Officer  
17 Ternand.

18 Q. Okay. I also understand that you have  
19 a problem with the rendition of facts of  
20 Officer Ternand; is that correct?

21 A. I don't know what you mean by problem.

22 Q. You don't believe him? You think some  
23 of the things he is saying either he actually  
24 didn't see or possibly just made up; is that

1 right?

2 A. I do not believe his account matches  
3 the physical and circumstantial evidence.

4 Q. Fair enough. What I'd like to do is  
5 I'd like to ask you a series of questions  
6 regarding Officer Ternand. And let's assume we  
7 are going to take Officer Ternand's account as  
8 true. Okay? In these next couple of  
9 questions. All right?

10 A. Yes.

11 Q. Officer Ternand is going eastbound  
12 down that alley as it approaches Indiana; is  
13 that correct?

14 If you want to, you can look.

15 There's an exhibit in front of you that may  
16 help you.

17 A. That is my understanding of his  
18 account.

19 MR. FIEWEGER: I'm going to object. You  
20 said eastbound.

21 BY MR. THOMPSON:

22 Q. Westbound down that alley; is that  
23 right?

24 A. Yes.

1           Q.    You can see the big three that's been  
2 put on Exhibit No. 2 in that alley?

3           A.    Yes.

4           Q.    Let's assume that Officer Ternand's  
5 vehicle is in that position, correct?

6           A.    Yes.

7           MR. GRACE:   Do you have that little --  
8 amazing little clicker?

9           MS. WHALEY:   Yes, we do.

10          BY MR. GRACE:

11          Q.    I'm not going to hit you in the eye or  
12 anything.  All right?

13                   So this number three right here,  
14 here Ternand's car.  Do you see that?

15          A.    Yes.

16          Q.    And pursuant to the testimony by  
17 Sledge and Bruno, they are in the vehicle right  
18 behind him, correct?

19          A.    Are you talking about the information  
20 in the report?

21          Q.    Yes.  Let's talk about the information  
22 in the report.  Because as you testified  
23 before, the reports that you used, the four  
24 corners of the report that we need to rely upon

1 is what you reviewed; is that right?

2 A. Yes.

3 Q. So then we got Dakota Bright here. We  
4 don't need to be exact. He enters the mouth of  
5 this alley, correct?

6 A. Yes.

7 Q. Remember, we're going to go under the  
8 assumption that Officer Ternand is an alter  
9 boy, and he has not told a lie about anything  
10 that you reviewed. Okay?

11 A. Yes.

12 Q. You got me?

13 A. Yes.

14 Q. So Ternand then says he sees Dakota  
15 Bright standing in this alley with a pistol in  
16 his right hand, correct? That's what he says,  
17 right?

18 A. Yes.

19 Q. And then we know that Dakota Bright  
20 runs north on Indiana, correct?

21 A. Yes.

22 Q. Ternand speeds up, turns the corner.  
23 By the way, Ternand is the passenger, correct?

24 A. That's right.

1           Q.    And they broadcast over OEMC the 911  
2 call over the zone, Man running north dressed  
3 in red wearing" -- holding his left side; is  
4 that right?

5           A.    I believe his partner radioed that.

6           Q.    That's right. And the partner says  
7 this, and the OEMC operator responds back over  
8 the zone, the same information to alert all  
9 their people in the zone of what's going on,  
10 right?

11          A.    She indicates -- she instructs the  
12 officers to be cautious.

13          Q.    She uses the words be cautious. You  
14 included in your report be cautious, they all  
15 believed he had a gun, right? You put that in  
16 your report?

17          A.    They suspected he had a gun.

18          Q.    That's right. Off he runs holding his  
19 left side. Then he proceeds to go eastbound on  
20 Marquette; is that right?

21          A.    Yes.

22          Q.    We know that Bruno and Sledge, they  
23 sit tight here in the alley, right? Right  
24 here. They remain right here, correct?

1           A.    For some period of time.

2           Q.    And when asked why's that, Bruno said  
3    the tactic was they wanted to make sure Dakota  
4    Bright didn't double back; is that right?

5           A.    Yes.

6           Q.    So that tactic, while unspoken and not  
7    commute indicated to anybody at this point over  
8    OEMC or push-to-talk or anything else, that was  
9    a tactic being utilized by at least Bruno and  
10   Sledge at that point, correct?

11          A.    Yes.

12          Q.    And somehow Ternand and Razo, who know  
13    nothing -- who didn't communicate this, knew  
14    that they were going to hang south; is that  
15    right?

16          A.    I'm not sure I understand.

17          Q.    Well, Bruno and Razo, they go -- they  
18    go eastbound on Marquette -- go eastbound on  
19    Marquette and follow -- and stop right at the  
20    mouth of this alley; is that right?

21          A.    Yes.

22          Q.    And at that point, isn't it true that  
23    there's a OEMC -- sorry. Sorry to use that  
24    nomenclature. A 911 or a dispatch call where

1 we can hear either Bruno or -- either Ternand  
2 or Razo say he's coming back at you, Gino?

3 A. Yes.

4 Q. That's a tactic? They are telling  
5 him, he is coming back your way, correct?

6 A. Not only is it a tactic, it is a good  
7 tactic.

8 Q. Correct. But as I understood your  
9 testimony on direct examination and under  
10 cross, your problem was they weren't  
11 communicating with each other, right?

12 A. After the foot pursuit began.

13 Q. But sometimes officers are able to  
14 communicate with each other without even having  
15 to talk to each other back and forth, correct?

16 A. Not very effectively.

17 Q. But they still do it, don't they?

18 A. Not very effectively.

19 Q. I tell you what, I bet you Seal Team 6  
20 would think differently when they took bin  
21 Laden down and didn't say a word; are you aware  
22 of that?

23 MR. FIEWEGER: Objection. Argumentative.

24 HEARING OFFICER WOOD: Sustained.

1           MR. GRACE: Fair enough. Move on.

2 BY MR. GRACE:

3           Q. Anyway, Ternand stops. They stop the  
4 vehicle, correct?

5           A. Yes.

6           Q. And according to Ternand -- again,  
7 remember this line of questioning is going  
8 under what is going through Brandon Ternand's  
9 mind. He begins to pursue Dakota Bright south;  
10 is that right?

11          A. On foot, yes.

12          Q. Now, Razo, he positions himself this  
13 way and parallels Dakota Bright. Are you aware  
14 of that?

15          A. That's my understanding.

16          Q. That could be considered a tactic,  
17 could it not?

18          A. A bad one.

19          Q. Well, that's your opinion.

20                   Now, the next -- by the way, you  
21 said you went out to the scene yesterday; is  
22 that right?

23          A. Yes.

24          Q. You identified Exhibit No. 5 and 6; is

1 that right?

2 A. Yes.

3 Q. I don't know how much time you spent  
4 in Chicago, but this happened in October -- in  
5 November of -- November. We don't have this  
6 kind of foliage that's depicted on Exhibits 5  
7 and 6. Do you realize that?

8 A. I sure do.

9 Q. Actually, when you try to go out  
10 there, touch, feel and not taste the scene, you  
11 couldn't very well because this shows a lot of  
12 foliage, right?

13 A. It's not the same.

14 Q. Sure, it's not the same. Not the same  
15 view that Officer Ternand had when he was  
16 running down that alley; is that correct?

17 A. That's correct.

18 Q. Now we got Dakota Bright racing down  
19 this alley. He jumps the first little chain  
20 link fence, correct?

21 A. Yes.

22 Q. Then he jumps the guardrail, correct?

23 A. Yes.

24 Q. Then he goes fence, fence, fence,

1 correct?

2 A. Yes.

3 Q. According to Officer Ternand who is  
4 following him, he's not changing, he's favoring  
5 his left side and continues to pursue him; is  
6 that correct?

7 A. Yes.

8 Q. And, in fact, he runs into Bruno right  
9 here; is that right?

10 A. That's right.

11 Q. What's he tell Officer Bruno?

12 A. I believe he indicates that Bright is  
13 armed.

14 Q. So we know right there, if we believe  
15 Brandon Ternand at this point right here,  
16 Brandon Ternand still believes that Dakota  
17 Bright has that gun; is that right?

18 A. Correct.

19 Q. As they continue down. Brandon hits  
20 the six-foot fence and Dakota Bright hits the  
21 last fence; is that right?

22 A. I don't know what you mean by hit.

23 Q. I'm sorry. That's a good point.

24 Brandon gets to, arrives at, comes upon the

1 six-foot fence; is that right?

2 A. Yes.

3 Q. He doesn't scale the fence. That's  
4 where he remains when he takes the shot, right?

5 A. Yes.

6 Q. We got Officer Bruno paralleling down  
7 the alley; is that correct? That's what  
8 Bruno's testimony was?

9 A. Yes.

10 Q. You were there yesterday. This point  
11 right here in the middle of the yard where  
12 Dakota Bright was and this point right here,  
13 it's half a lot, correct? It's close?

14 A. Yes.

15 Q. So you got Dakota Bright right here.  
16 He's got Ternand coming from the north. He's  
17 got Razo somewhere over here, whether you knew  
18 that or not I've give you, and we know we got  
19 Sledge down here southwest to create what's  
20 called a boxing movement, agreed?

21 A. No.

22 Q. They got him boxed in. He can't go  
23 north. He can't go west. He can't go east.  
24 And as you found out yesterday, there is no

1 where to go south, correct?

2 A. No.

3 Q. So let's go back to Brandon Ternand.

4 Brandon's running down and gets to that  
5 six-foot fence. Dakota Bright jumps that  
6 six-foot fence, and for the first time, Dakota  
7 Bright's demeanor changes, according to  
8 Brandon, correct? He stops, correct?

9 A. Yes.

10 Q. And Brandon says that Dakota Bright at  
11 this point reaches forward with his right hand  
12 to his left side; is that correct?

13 A. That's what he says.

14 Q. And the last time that Brandon Ternand  
15 saw Dakota Bright, according to Brandon  
16 Ternand, Dakota Bright saw him reaching to his  
17 left side with his right hand was when he had a  
18 pistol in his hand, correct?

19 Right over here, right on the  
20 corner, right on the corner. Doesn't Brandon  
21 Ternand testify in his deposition and two IPRA  
22 statements and to the Chicago police officers  
23 that he sees Dakota Bright enter the alley and  
24 place the gun on his left side with his right

1 hand?

2 A. Yes.

3 Q. So now Dakota Bright stopped and  
4 Brandon Ternand from his position sees Dakota  
5 Bright go towards his left side with his right  
6 hand. We agree upon that? That's what Ternand  
7 says; is that right?

8 A. That's what he says.

9 Q. And you find that to be incredible  
10 that Dakota Bright in that position would reach  
11 for something that's not there, correct?

12 A. I do not believe that it's more  
13 probable than not.

14 Q. Because why would it make sense that  
15 somebody would reach for something for a  
16 phantom object that doesn't exist, because we  
17 all know the gun was found right at the corner  
18 of Indiana and the alley, right?

19 A. Yes.

20 Q. Let me ask you a question. Did you  
21 know that Dakota Bright's cell phone was  
22 found -- I believe it's on this fence or that  
23 fence. He dropped the cell phone when he  
24 jumped the fence, were you aware of that?

1           MR. FIEWEGER: Objection. Foundation.

2    There's nothing establishing anything about a  
3    cell phone or who possessed a cell phone.

4           MR. THOMPSON: Judge, we're going to have a  
5    witness testify. If he reviewed the reports,  
6    he should know that Dakota Bright's cell phone  
7    was located on that flight path. I think it's  
8    proper inquiry.

9           HEARING OFFICER WOOD: I'll let you ask the  
10   question.

11   BY MR. GRACE:

12    Q.   Did you know that, Mr. Gennaco?

13    A.   Did I know what?

14    Q.   That Dakota Bright's cell phone was  
15    found on one of these fences, either this  
16    fence -- it was found -- my partner is helping  
17    me. It was found right next to the six-foot  
18    fence that Brandon Ternand was standing at, did  
19    you know he that?

20    A.   My understanding is a cell phone was  
21    located.

22    Q.   They located a cell phone that a  
23    Chicago police officer inventoried and  
24    accredited to owner of as being Dakota Bright?

1           A.    My understanding it was not  
2 conclusively determined it was Mr. Bright's  
3 phone.

4           Q.    Well, the phone was working, it was  
5 charged, it hadn't been destroyed or decayed by  
6 rain, and it was a cell phone that could  
7 operate. Okay? And it was located right  
8 there?

9           A.    Yes.

10          Q.    So is it possible that Dakota Bright  
11 dropped his cell phone, jumped over that last  
12 fence, realized he was trapped, and went to  
13 reach for his cell phone that was in his left  
14 pocket?

15          A.    Not based on the evidence that I  
16 reviewed.

17          Q.    Is it possible that Dakota Bright went  
18 to pull up his pants?

19          A.    Anything's possible, sir.

20          Q.    Correct. Is it possible that Dakota  
21 Bright -- did you know that Dakota Bright  
22 received injuries as he was jumping those  
23 fences to his left hand and left leg?

24          A.    I do know that.

1       Q.    So it could be possible that Dakota  
2 Bright, and tragically, okay? Tragically was  
3 telegraphing to or giving signals to Brandon  
4 Ternand that Brandon was misinterpreting for  
5 someone reaching for a gun; is that possible?

6       A.    It sure is.

7       Q.    And that's the tragedy of this case,  
8 is it not?

9       A.    It is.

10      Q.    Dakota Bright had no idea that by him  
11 ditching the gun and not telling the police  
12 officers, running north on that street  
13 without -- while holding his left side and  
14 running down and stopping at that last fence,  
15 was sending signals to Brandon Ternand that  
16 Brandon was taking as someone had a gun, right?

17      A.    I think there is evidence that Officer  
18 Ternand at the time he shot may have still  
19 believed that Mr. Bright was carrying a weapon.

20      Q.    You -- it's not a big leap. I  
21 appreciate that. But you acknowledge that in  
22 Brandon Ternand's mind, the reasonable  
23 objective position of Brandon Ternand is this  
24 guy still had a gun, right?

1           A.    Yes.

2           Q.    And it's less than 50 feet away.  Do  
3  you know the distances -- do you know the  
4  distances by which Chicago police officers are  
5  required to qualify for each and every year  
6  with a handgun?

7           A.    I don't know for sure.

8           Q.    There's 7 feet, 21 feet -- I was told  
9  there was no math today.  21 yards, 25 feet,  
10 2 -- stop.

11          MR. FIEWEGER:  Objection.  Foundation.

12          MR. GRACE:  I agree.

13  BY MR. GRACE:

14          Q.    They are required to qualify at 21  
15  yards, 45 yards and 75 yards.  Are you aware  
16  of --

17          A.    No.

18          Q.    I'm sorry.  21 feet, 15 feet, and 75  
19  feet, are you aware that that's the  
20  qualifications every single calendar year a  
21  Chicago police officer needs to qualify at the  
22  range with a firearm?  Are you aware of that?

23          A.    I'm not aware with regard to the  
24  police department, but that is a standard

1 qualification for most agencies.

2 Q. Very good. So why in God's name would  
3 you have a police officer qualify at 75 feet,  
4 okay, and not anticipate that he would be able  
5 to fire a round from that distance with some  
6 degree of accuracy?

7 A. I think that is an expectation.

8 Q. That's correct.

9 And Brandon Ternand was not at  
10 the extent of that portion, was he? He was  
11 only at 54 feet, correct?

12 A. Yes.

13 Q. He was doing what he was trained to do  
14 when he fired the gun with respect to distance,  
15 agreed?

16 A. No.

17 Q. Okay. Let me ask you another  
18 question. You have a problem with the number  
19 of shots fired by Brandon; is that correct?

20 A. I don't have a problem with them.

21 Q. Well, your opinion, which comes to the  
22 ultimate conclusion that this was an  
23 unreasonable shooting, one of the basis is the  
24 fact that he didn't fire more than one round;

1 is that correct?

2 A. The fact that one round was fired is  
3 inconsistent with his version of events.

4 Q. Okay. Don't we want to teach our  
5 officers fire discipline? Isn't that something  
6 that's ingrained in them at the academy?

7 A. Yes.

8 Q. Isn't it true that you are supposed to  
9 stop using deadly force when the threat no  
10 longer exists; isn't that true?

11 A. Yes.

12 Q. Isn't it true that if Brandon Ternand  
13 on his first shot, okay, was able to stop the  
14 threat from persisting, that he actually showed  
15 good fire discipline by not continuing to fire  
16 his weapon?

17 A. Unfortunately, under the circumstances  
18 that Officer Ternand related, that's not  
19 possible.

20 Q. How is that not possible? Let me just  
21 ask so you can try to answer. What  
22 specifically did Officer Ternand do that makes  
23 you believe he did not have good fire  
24 discipline?

1           A.    If you believe that he was being  
2 aggressed and under threat and felt threat of  
3 deadly force was towards him, it's just not  
4 possible for one round to be -- to be  
5 sufficient for an officer to feel like he has  
6 eliminated the threat. Even if a person goes  
7 immediately to the ground.

8           Q.    How could that be?

9                   Let me ask you a question. I get  
10 your point. So what you're doing is you are  
11 penalizing him, okay? You are penalizing  
12 Officer Ternand which helps lead to your  
13 ultimate conclusion, you are penalizing him  
14 because his first shot was good, and he stopped  
15 the threat, that's what you're doing?

16          A.    That's not what I'm doing.

17          Q.    How can you not be? You are saying  
18 that Officer Ternand, there's no way he would  
19 have known after firing the first shot that the  
20 threat went away; is that correct?

21          A.    What I'm saying it's not possible,  
22 based on my experience, for an officer to have  
23 that degree of observation and if the time just  
24 doesn't work out.

1           Q.    But it did in this case, though,  
2 didn't it?

3           A.    Based on his statement.

4           Q.    Well, based on the evidence, only one  
5 shot was fired?

6           A.    My point is that when officers are  
7 being aggressed and feel that their lives are  
8 in danger, that they are trained to eliminate  
9 the threat, and that usually takes at least two  
10 rounds and usually more before the threat is  
11 eliminated in their minds.

12          Q.    Let me ask you a question.  Okay?  If  
13 Officer Ternand came running down -- running  
14 down this alley -- this lot and into these  
15 backyards, and Dakota Bright's demeanor changed  
16 at that last gate, and Officer Ternand had to  
17 make a quick decision.  Okay?  And he quickly  
18 aimed his gun and fired at Dakota Bright one  
19 quick shot, is that possible?

20          A.    Based on the circumstances, it's  
21 highly unlikely that one round would have come  
22 from Officer Ternand based on his assessment  
23 and his observations as stated by him  
24 repeatedly in various interviews.

1           Q.    Dakota Bright's demeanor changed when  
2  he hit that last fence; is that right?

3           A.    I don't know.

4           Q.    Dakota Bright -- Ternand said he went  
5  to his left side.  We know Dakota Bright  
6  stopped when he hit that last fence -- when he  
7  got over that last fence?

8           A.    We don't know that.

9           Q.    Okay.  What do you base on the fact  
10  that that didn't happen?

11          A.    I don't base it one way or the other.  
12  All we have is one person who is still alive  
13  and can talk about that.

14          Q.    So it's unimpeached, unrebutted  
15  evidence, right?

16          A.    No, it's not.

17          Q.    What is impeached about Brandon  
18  Ternand's evidence that Dakota Bright when he  
19  jumped that last fence, and Dakota Bright knew  
20  that Bruno was here, Sledge was here and --

21          MR. FIEWEGER:  Objection.

22  BY MR. GRACE:

23          Q.    -- and Razo was on Prairie --

24          MR. FIEWEGER:  Objection.  There's no

1 foundation about Dakota Bright knowing anything  
2 about where any officers were.

3 MR. GRACE: Wasn't that an objection,  
4 Judge, that you told Mr. Thompson was improper  
5 because he should be allowed to go into the  
6 intent of Dakota Bright? Didn't we talk about  
7 that earlier?

8 HEARING OFFICER WOOD: I don't see how he  
9 can possibly speculate whether Dakota Bright  
10 knew where all those cops were. Who can answer  
11 that question?

12 MR. GRACE: I agree with you. That's  
13 argument for closing argument. I agree with  
14 you on that point. Fair enough. I agree with  
15 you on that point.

16 HEARING OFFICER WOOD: Okay.

17 BY MR. GRACE:

18 Q. So I think my point I was trying to  
19 make is that your position is that Dakota  
20 Bright would not have made any different  
21 movement over the fence, it doesn't make any  
22 sense that he would change his demeanor?

23 A. I don't know about demeanor. I don't  
24 know what that means.

1           Q.    I'm trying to think of a word we can  
2 use.  Trajectory of his body or does something  
3 different than he was doing when he was running  
4 up and down the lots?

5           A.    He could have glanced back, and I said  
6 as much in my report.

7           Q.    If he glances back -- I'm just trying  
8 to get you into the mind-set of this officer.  
9 Okay?

10                   When Brandon's running down  
11 that -- gets to that six-foot fence, and Dakota  
12 Bright glances back, and Ternand sees the  
13 movements of Dakota Bright, okay, Ternand is  
14 processing this, correct?

15           A.    Yes.

16           Q.    He is using all of his training,  
17 correct?

18           A.    Yes.

19           Q.    Or he should be?

20           A.    He should be, but I'm not sure he is.

21           Q.    He should be using all of his  
22 training, right?

23           A.    He should be.

24           Q.    He is also using everything he knows

1 about human nature and being afraid and scared  
2 and all of the things that go into that, right?

3 A. You are afraid. You don't know about  
4 being afraid.

5 Q. These police officers aren't robots,  
6 are they?

7 A. No.

8 Q. They're afraid just like and I are,  
9 right?

10 A. They can be.

11 Q. Unfortunately, you and my job is to  
12 run away from danger, and their job is to run  
13 towards danger?

14 A. Not always.

15 Q. When you see a guy standing on the  
16 corner of Indiana dressed in DOD gang colors  
17 holding a white pistol, our expectation is the  
18 guys we pay on the force should run towards  
19 that guy; is that right?

20 A. No.

21 Q. Our expectation we should let Dakota  
22 Bright go?

23 A. No.

24 Q. What is your expectation of Brandon

1 Ternand on that day on November 8th, 2012?

2 What should he have done that you find so  
3 wrong?

4 A. He should have worked with his  
5 partners. He had three other partners there.  
6 He should have worked with them to safely  
7 apprehend the individual.

8 Q. How do you do it? That's a great  
9 theoretical statement to make in a classroom.  
10 I'm asking you, what are the tactics that you  
11 say he should have done? Buttress that with  
12 where in the general orders does it say he  
13 should have done those tactics that you're  
14 about to tell us about.

15 MR. FIEWEGER: Objection. Asked and  
16 answered. He's covered what he thought he  
17 should have done and what he is critical of on  
18 direct. You're going to go over the direct  
19 testimony again.

20 MR. GRACE: Kind of fair enough. After  
21 this question, Judge, I think I'll be close to  
22 being done.

23 HEARING OFFICER WOOD: Thank you.

24 BY MR. GRACE:

1           Q.    Go ahead.  Do you want me to repeat  
2  it?

3           A.    Either you or the reporter.

4           Q.    Maybe I can chop it down a little bit.

5                   The tactics that you said  
6  that -- I asked you if they should have gone  
7  chasing after Dakota Bright or should have  
8  tried to apprehend Dakota Bright, and you  
9  agreed, yes, they should have tried to  
10 apprehend Dakota Bright, correct?

11          A.    Yes.

12          Q.    And I said -- and you disagree with  
13 the tactics that they used that day, correct?

14          A.    Most of them.

15          Q.    And I'm asking you, okay, what tactics  
16 should they have used at that point when they  
17 see him standing there with a gun in his right  
18 hand dressed like a DOD gang member?

19          MR. FIEWEGER:  Same objection.

20          HEARING OFFICER WOOD:  He testified to all  
21 of that on direct, so I don't know what you're  
22 asking him.

23          MR. FIEWEGER:  Does he want him to go  
24 through again, at this point you should have

1   done this, because that's what the question's  
2   asking for.

3            MR. GRACE: This last group of questioning.

4            HEARING OFFICER WOOD: Let me say this. On  
5   direct, he testified to the areas that he was  
6   critical of in terms of -- he said this is what  
7   he criticized, this is what he criticized, this  
8   is what he thinks should have happened. Am I  
9   right?

10          MR. FIEWEGER: Yes. And he also said what  
11   he thought should have been done, should have  
12   been on the radio more, step behind the tree.

13          MR. GRACE: This is cross. What he said,  
14   he had a problem with the foot chase. I know  
15   what you're saying, Judge. I'll move on.

16   BY MR. GRACE:

17          Q. I'll tell you, you had a problem with  
18   the foot chase, correct?

19          A. I don't know about problem.

20          Q. Okay. You criticized the foot chase?

21          A. I thought there should have been more  
22   communication, should have been a split. There  
23   were two splits actually. He shouldn't have  
24   jumped a fence, and he should have continued to

1 get the uniforms over there by communicating  
2 where Mr. Bright was.

3 Q. Well, they went over the radio and the  
4 call was made out man running northbound on St.  
5 Louis dressed in red, holding his left side.

6 A. That's in the car.

7 Q. Okay. That was the call, correct?

8 A. I'm talking about continual  
9 communication, and I am focusing on after he  
10 gets out of the car, where there is none.

11 Q. There is. There is. There is, He's  
12 got a gun to Officer Bruno right here.

13 Bruno -- Officer Ternand sees Bruno paralleling  
14 down the alley, correct?

15 A. Yes. And, as I indicated, if I  
16 didn't, I'll be very clear, his alerting Bruno  
17 to the belief that he has a gun was a sound  
18 tactic.

19 Q. Okay. Okay. And the question is:  
20 Ternand continued to chase after Dakota Bright,  
21 and you believe that he should have stopped the  
22 chase at this point?

23 A. I believe that once he encountered a  
24 three-foot fence, he should not have continued

1 in that direction, yes.

2 Q. So a Chicago police officer is  
3 supposed to be encumbered and ended on a  
4 three-foot fence?

5 A. Chicago police officer should be  
6 considering his safety as predominant.

7 Q. Well, he is considering his safety,  
8 but I sure the hell hope he can traverse a  
9 three-foot fence.

10 A. That is not consistent with officer  
11 safety principles.

12 Q. Okay. What number fence is it okay to  
13 traverse? A two-foot fence; is that okay?

14 I know it's a ridiculous  
15 question, but isn't it true that police  
16 officers need to put themselves into dangerous  
17 situations every day to get the bad guys? They  
18 need to do it every day. And sometimes we  
19 can't sit here, you'd agree, and second guess  
20 every decision that they make?

21 A. We're always second guessing officers,  
22 and we should, and they should second guess  
23 themselves.

24 Q. Is it fair to terminate a police

1    officer who's trying to chase after a bad guy  
2    when he is following the general orders?

3            MR. FIEWEGER: Objection.

4            HEARING OFFICER WOOD: Sustained.

5    BY MR. GRACE:

6            Q.    Last question I got for you. Are you  
7    aware that the Chicago Police Department gave  
8    him a commendation for his actions on that day?  
9    Are you aware of that?

10          A.    I have been informed. There is a  
11   difference between valor and appropriate  
12   conduct.

13          MR. GRACE: I guess you should talk to the  
14   Superintendent. No further questions.

15          HEARING OFFICER WOOD: Thank you. Any  
16   redirect?

17          MR. FIEWEGER: Just a little bit.

18                    REDIRECT EXAMINATION

19    BY MR. FIEWEGER:

20          Q.    Counsel asked you some questions about  
21   fire discipline, right?

22          A.    Yes.

23          Q.    I think your point was when an officer  
24   is aggressed, it's difficult for them, if not

1 impossible, to exercise fire discipline to the  
2 extent they only fire one shot?

3 A. Yes, that's correct.

4 Q. Would it affect your opinion at all if  
5 you were informed that Officer Ternand had  
6 testified that he wasn't sure whether or not he  
7 hit Dakota Bright when he fired his weapon?

8 A. Yes.

9 Q. How so?

10 A. Because if he's not sure that he's  
11 actually eliminated the threat, the threat  
12 still exists, and it would suggest that more  
13 rounds would need to be fired.

14 Q. Now, in response to questions from  
15 Mr. Thompson, you indicated you had reviewed  
16 the tactical response report?

17 A. Correct.

18 Q. And that tactical response report was  
19 approved by then the commanding officer, Eddie  
20 Johnson, correct?

21 A. Correct.

22 Q. And Mr. Johnson is currently the  
23 commander of the Chicago Police Department?

24 A. Superintendent.

1           Q.     Superintendent?

2           A.     Correct.

3           Q.     Was there anything about the timing of  
4     that approval that you noticed?

5           A.     It was remarkable that the approval  
6     occurred on the same day of the incident.

7           Q.     Why do you think that was remarkable?

8           A.     I've never seen it before, but at that  
9     point, how can you judge or assess the  
10   legitimacy of the use of deadly force when all  
11   the facts haven't come in?

12          Q.     Now, I think you also indicated in  
13     response to questions from Mr. Thompson that  
14     you didn't conclude that Officer Ternand was  
15     lying, but that you had some problems with his  
16     account. How do you square the two?

17          A.     You don't. And lying suggests  
18     mandraya (phonetic). And I'm not here to talk  
19     about, you know, what was in the mind of the  
20     officer. All I'm suggesting is what he says  
21     happened and what the physical evidence  
22     suggests happened or indicates happened do not  
23     match up.

24          Q.     You indicated that you had reviewed

1 some materials after you drafted your report,  
2 correct?

3 A. Yes.

4 Q. I believe those were training  
5 materials that were provided to you?

6 A. Yes.

7 Q. Why did you review those?

8 A. Because I thought it was important and  
9 always is important to understand the training  
10 that an officer is provided by the department  
11 and ensure that they match up with the policy,  
12 so we have a better understanding of what is  
13 expected of an officer.

14 Q. Why didn't you update the report?

15 A. The report -- I reviewed the materials  
16 after I saw the training -- I reviewed the  
17 training.

18 Q. Why did you not update your report?

19 A. I didn't see anything that struck me  
20 as a change in my view and opinions.

21 Q. You were asked some questions  
22 regarding the nature of the offense that Dakota  
23 Bright may have committed as he walked into  
24 that alley that afternoon, right?

1           A.    Yes, sir.

2           Q.    Do you remember those questions?

3           A.    I do.

4           Q.    And you were asked -- it was indicated  
5    to you that it was possible that Dakota Bright  
6    had committed a nonprobational Class 4 felony.  
7    Do you remember that?

8           A.    I remember the discussion.

9           Q.    If that is, in fact, the state of the  
10   law, does that affect your opinion at all?

11          A.    No.

12          Q.    Why not?

13          A.    Because the general order talks about  
14    forcible felony. I do not believe it was a  
15    forcible felony. Whether it's a probationary  
16   offense or nonprobationary offense is  
17   relatively irrelevant. It doesn't move  
18   anything materially.

19          Q.    This I believe was in the context of  
20   the Graham analysis, I believe.

21          A.    Doesn't affect the Graham analysis to  
22   any significant degree.

23          Q.    Are you aware of anything -- any  
24   evidence that indicates that the time that

1      Officer Ternand and Officer Razo  
2      observed -- first observed Dakota Bright, that  
3      they were aware that that weapon was loaded?

4            A.     No.

5            Q.     Are you aware of anything that  
6      indicated that they were aware that at the time  
7      they observed Dakota Bright, that he may have  
8      had a prior conviction?

9            A.     No.

10          Q.    Mr. Thompson I believe asked you some  
11      questions about the third prong of the Graham  
12      analysis. Do you remember those?

13          A.    Yes.

14          Q.    And that was about whether the suspect  
15      is actively resisting or attempting to evade  
16      arrest?

17          A.    Yes.

18          Q.    How does that prong apply? How does  
19      that work?

20          A.    It's consideration. One of the things  
21      you evaluate, and I don't think there's any  
22      dispute really that he was trying to get away,  
23      he was trying to flee.

24          Q.    Would it be your -- is it accurate to

1 conclude that if a suspect is attempting to  
2 evade arrest as opposed to actively resisting  
3 arrest, that that would be a factor that would  
4 weigh against the use of deadly force?

5 A. It's a difference, yes. It's  
6 certainly a heightened level of threat if  
7 somebody is resisting as opposed to merely  
8 trying to escape.

9 MR. FIEWEGER: That's all I have.

10 HEARING OFFICER WOOD: Anything else?

11 MR. GRACE: Just a couple of questions on  
12 redirect.

13 RECROSS-EXAMINATION

14 By MR. GRACE:

15 Q. Sir, you answered questions about  
16 forcible felonies he just asked you; is that  
17 correct?

18 A. I think the question had to do with  
19 Graham versus Connor analysis.

20 Q. Right. According to the general  
21 orders, a sworn member is justified in using a  
22 force likely to cause death or great bodily  
23 harm only when he or she reasonably believes  
24 that that force is necessary, one, to prevent

1 death or great bodily harm to himself or  
2 another person; and two, to prevent an arrestee  
3 from being -- an arrest from being defeated by  
4 resistance or escape. And the sworn member  
5 reasonably believes the offender has committed  
6 or is attempting to commit a forcible felony,  
7 correct?

8 A. Yes.

9 Q. And you've indicated that you do not  
10 find that an unlawful use of a weapon is a  
11 forcible felony, so Mr. Ternand cannot avail  
12 himself to that part of the statute, correct?

13 A. Based on the information, yes.

14 Q. And then on the general order, it  
15 gives definitions of what a forcible felony is,  
16 correct?

17 A. Yes.

18 Q. And it quotes straight to forcible  
19 felonies, which is found in the Illinois  
20 criminal code; is that correct?

21 A. I'd have to take a look.

22 Q. Here's the general order right here.

23 MR. FIEWEGER: That's the second?

24 BY MR. GRACE:

1           Q.     Second page of the general order. I'm  
2 showing you what's been marked as --

3           HEARING OFFICER WOOD:   Exhibit 4.

4   BY MR. GRACE:

5           Q.     Exhibit 4. The second page of the  
6 General Order 03-02-03 it references what  
7 forcible felonies are, correct?

8           A.     Correct.

9           Q.     And then it gives a whole laundry list  
10 of some pretty scary crimes; is that right?

11          A.     Yes.

12          Q.     Kidnapping, heinous battery, all kinds  
13 of things?

14          A.     Right.

15          Q.     The last sentence, I think I got it  
16 underlined for you, what does it say?

17          A.     "And any other felony which involves  
18 use or threat of physical force or violence  
19 against any individual."

20          Q.     So I think the disconnect that we've  
21 had on this side of the room is that an  
22 unlawful use of a weapon would fall under that  
23 underlined portion, at least in Illinois?

24          MR. FIEWEGER: I'm going to object. It

1 calls for a legal conclusion and also  
2 inconsistent with the law.

3 MR. GRACE: Whoa.

4 MR. FIEWEGER: We'll bring case law. I  
5 didn't know this was going to be an issue.

6 MR. GRACE: What is inconsistent, Jim?

7 MR. FIEWEGER: That the use of an unlawful  
8 possession of a weapon is forcible felony. I  
9 don't believe that's consistent with the law.

10 HEARING OFFICER WOOD: That's not what it  
11 says. Okay?

12 MR. GRACE: So --

13 HEARING OFFICER WOOD: Stop. That's not  
14 what it says.

15 The question you asked him is a  
16 mischaracterization of what this says. So I  
17 would object -- the objection would be  
18 sustained on that ground, and it would be  
19 sustained on the second ground. You're asking  
20 him to make a legal opinion, and he is not here  
21 in his capacity as an attorney.

22 MR. GRACE: Hold on one second. Can I see  
23 the exhibit back, sir?

24 My point is this, your Honor --

1 and I'm not trying to be difficult here, trust  
2 me. We've had a long day.

3 MR. FIEWEGER: I'm not trying to, either.

4 MR. GRACE: Under the Illinois law,  
5 forcible felony, okay, is any other felony.

6 Okay? We got the laundry list and any other  
7 felony which involves a use or threat of  
8 physical force or violence against any  
9 individual. Okay? What my question -- where I  
10 was leading to is: We got a guy going down the  
11 alley with a gun in his hand who is about to  
12 possibly -- it's possible, to commit a forcible  
13 felony, or he could have been walking to the  
14 gun range. I agree. But my point is that it  
15 doesn't completely remove that prong because it  
16 isn't a forcible felony, it's Brandon's  
17 interpretation that the guy could have been  
18 going to commit a forcible felony which allows  
19 for the use of deadly force.

20 HEARING OFFICER WOOD: The only thing you  
21 can ask this witness is whether or not it falls  
22 within this, and he says yes, it does, or no,  
23 it doesn't. That's it.

24 MR. GRACE: Okay. I'll ask that question

1 and we'll go to lunch.

2 HEARING OFFICER WOOD: Okay.

3 BY MR. GRACE:

4 Q. Do you believe, okay, that an  
5 individual standing at the mouth of the alley  
6 with a gun in his hand may be in the process of  
7 or attempting to commit a forcible felony?

8 A. No.

9 MR. GRACE: I got to live with that. Thank  
10 you.

11 HEARING OFFICER WOOD: You do.

12 MR. GRACE: Because you are not going to  
13 let me go any further.

14 HEARING OFFICER WOOD: Anything else for  
15 this witness?

16 MR. FIEWEGER: No.

17 HEARING OFFICER WOOD: Un-mic yourself.  
18 You may step down.

19 (Witness Excused.)

20 HEARING OFFICER WOOD: Off the record for a  
21 second.

22 (Discussion off the  
23 record.)

24 (Witness was duly

6 DIRECT EXAMINATION

7 BY MR. GRACE

8 Q. Could you please keep your voice up.

9 State your name and spell it for the record.

10 A. Renisha, R-E-N-I-S-H-A. Last name  
11 Ternand, T-E-R-N-A-N-D.

12 Q. How old are you?

13 A. 32.

14 Q. What's your relationship to Brandon  
15 Ternand?

16 A. He's my husband.

17 Q. Renisha where did you grow up?

18 A. Kankakee.

19 Q. Where did you go to high school?

20           A.     In Kankakee and Washington.   First  
21   half I went to school in Washington State and  
22   second half I graduated from Kankakee High  
23   School.

24 Q. Did your family move out to Washington

1 State?

2 A. Yes.

3 Q. And dragged you back?

4 A. And then we moved back here.

5 Q. Did you go to college?

6 A. Yes.

7 Q. Where did you go?

8 A. Chicago State.

9 Q. What's your degree in?

10 A. Psychology and occupational therapy.

11 Q. Are you employed?

12 A. Yes.

13 Q. Where do you work?

14 A. Licensed and Healthcare Center as an  
15 occupational therapist.

16 Q. How do you like that work?

17 A. I love my job.

18 Q. How long have you been married to  
19 Brandon?

20 A. Nine years.

21 Q. And do you have any children?

22 A. Yes, we have an eight-year-old son.

23 Q. What's his name?

24 A. Jayden.

1           Q.    And without telling me specifically  
2 where you live, can you give me the general  
3 area of the City you live in?

4           A.    We live on the south side.

5           Q.    Own or rent?

6           A.    Own.

7           Q.    Single-family house?

8           A.    Yes.

9           Q.    How did you meet Brandon?

10          A.    We met at a teen nightclub.

11          Q.    How old were you at that time?

12          A.    18.

13          Q.    How old was Brandon?

14          A.    20.

15          Q.    What drew you to him?

16          A.    Brandon is -- he is very  
17 compassionate, and he's very easy to talk to.

18          He's always willing to help people out. That's  
19 what drew me to him.

20          Q.    So what year did you get married?

21          A.    We got married in 2009.

22          Q.    So you met him in 2004 and got married  
23 in 2009. When you met him, was he a police  
24 officer?

1           A.     No.

2           Q.     Did he express to you he wanted to be  
3     a police officer?

4           A.     From the first day I met him, all he  
5     talked about was being a Chicago police  
6     officer. That was always his childhood dream,  
7     to be a police officer. For the City of  
8     Chicago specifically.

9           Q.     Did he ever tell you why he wanted to  
10    be CPD?

11          A.     He just always likes helping people,  
12    you know, and working with people.

13          Q.     Okay. So you guys were married in  
14    2009. And you lived obviously together in your  
15    home on the south side, correct?

16          A.     Uh-huh.

17          Q.     How do you feel about him being a  
18    police officer?

19          A.     Terrified, honestly, because he works  
20    in like the worst of the worst parts of the  
21    city. So every night I have to go to bed  
22    wondering like am I going to get that call, am  
23    I going to have to explain to my son where his  
24    dad is, why he is not coming home. But at the

1 same time, I'm very proud of him. He loves his  
2 work, and he is one of the most hard-working  
3 people I know.

4 Q. And have you spoken to him about your  
5 fears of him being a police officer?

6 A. Yeah.

7 Q. And have you had conversations about  
8 possibly not being a police officer?

9 A. No.

10 Q. Why not?

11 A. Because that's what he loves to do, so  
12 I have to support him in his decision.

13 Q. Now, the 15 or so years you've known  
14 Brandon, do you have an opinion about his  
15 honesty?

16 A. He's one of the most honest people I  
17 know. And sometimes he might be a little too  
18 honest, but that's okay. Like about my cooking  
19 or what I'm wearing, so yeah.

20 Q. Do you think Brandon should be allowed  
21 to go back --

22 A. Absolutely.

23 Q. Let me ask the question. Do you think  
24 Brandon should be allowed to go back to be a

1 Chicago police officer?

2 A. Absolutely.

3 Q. Do you think he is a credit to the  
4 uniform?

5 A. Absolutely.

6 MR. GRACE: Thank you for coming.

7 MR. FIEWEGER: No questions.

8 HEARING OFFICER WOOD: Thank you. You may  
9 step down. Please remove your mic.

10 (Witness Excused.)

11 HEARING OFFICER WOOD: No further witnesses  
12 today. We are going to suspend this hearing,  
13 and we will resume tomorrow at 10:30, not 10:00  
14 o'clock. Thank you all.

15 (WHEREUPON, the proceedings  
16 were adjourned at 1:25 p.m.  
17 and continued to May 18,  
18 2018, at the hour of 10:30  
19 a.m.)

20

21

22

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24

1 STATE OF ILLINOIS )  
2 COUNTY OF C O O K )        SS:  
3

4           MAUREEN A. WOODMAN, C.S.R., being first  
5 duly sworn, says that she is a court reporter  
6 doing business in the City of Chicago; that she  
7 reported in shorthand the proceedings had at the  
8 hearing of said cause; that the foregoing is a  
9 true and correct transcript of her shorthand  
10 notes, so taken as aforesaid, and contains all  
11 the proceedings of said hearing.

12

13

14



15  
16 MAUREEN A. WOODMAN, CSR  
17 License No. 084.002740  
18

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